Analysis on the Administration and Governance of the South African Case Docket

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I hereby declare that I have read and understood the regulations governing the submission of Masters of Law (LLM) dissertation including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

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DEDICATION

- God. Irrespective of form or shape, for his wisdom and strength which has seen me overcome the greatest of tempests.

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ABBREVIATIONS

AACER	**Automated Access to Court Electronic Records**
ADR	**Alternative Dispute Resolution**
AFIS	**Automated Fingerprint Identification System**
CAS	**Case Administration System**
CFM	**Case Flow Management**
CIET	**Community Information Empowerment and Transparency**
CJS	**Criminal Justice System**
CMS	**Case Management System**
CPA	**Criminal Procedure Act 51 of 1977**
CPF	**Community Police Forum**
CPR	**Child Protection Register**
CRC	**Criminal Record Centre**
CRIM	**Criminal Record System**
CSC	**Client Service Centre**
CSC	**Community Service Centre**
DCCO	**Detective Court Case Officer**
DE	**Docket Entry**
ECHR	**European Convention on Human Rights**
ECMS	**Electronic Case Management System**
eLAA	**Electronic Legal Aid Application**
EU	**European Union**
FIC	**First Information of Crime**
HTML	**Hypertext Markup Language**

ICDMS	**Integrated Case and Docket Management System**
ICMS	**Integrated Case Management System**
ICT	**Information and Communications Technology**
IIMS	**Integrated Inmate Management System**
IJS	**Integrated Justice System(s)**
KCOI	**Khayelitsha Commission of Inquiry**
KPI	**Key Performance Indicators**
LCMS	**Legal Case Management System**
MP	**Member of Parliament**
NDPP	**National Director of Public Prosecutions**
NPA	**National Prosecuting Authority**
NPM	**New Public Management**
OB	**Occurrence Book**
PAC	**Police Advisory Council**
PACER	**Public Access to Court Electronic Records**
PDF	**Portable Document Format**
SAFLII	**Southern African Legal Information Institute**
PPP	**Public Private Partnership**
SAP	**South African Police**
SAPS	**South African Police Services**
SITA	**State Information Technology Agency**
SOC	**State Owned Company**
TCIS	**Trial Court Information System**

ABSTRACT

KEYWORDS: Accountability, Administration, Case Administration System, Case Dockets, Case Management systems, Constitutional Dispensation, Criminal Justice System, Docket management, e-Docket system, Governance, Institutional role players, Integrated Justice System, National Prosecution Authority, New Public Management, South African Police Services, Systemic corruption.

The minor dissertation is a desktop literature study on the debates and research on the matter of docket management and administration in South Africa. The purpose of the minor dissertation is to understand the latest developments and trends that have transformed the administration and governance of case dockets globally and particularly in South Africa. A compendium of literature including governmental reports, scholarly journal articles and newspaper reports were utilised as the basis for this minor dissertation. The limitation to this study is primarily the paucity of South African literature on the subject matter as well as data gaps in empirical research. Effective case management has been the focal point for courts facing burgeoning bottlenecks throughout the world. Hence, techniques such as case screening or docket control, judicial intervention, attorney and advocate support, specialisation of courts and the integration of Information and Communications Technology (ICT) have been employed globally to expedite case flow. This research paper will draw on global paradigms and world's best practices for case docket management from North America, Europe and Namibia. Thereafter the research turns to administrative reform from a South African perspective; what will be examined is the transition from policing practices under the apartheid regime to case docket management under the constitutional dispensation of democratic governance. As part of an Integrated Justice System (IJS) strategy, South African policymakers have drawn from the pool of experience by adopting ICT projects within the Criminal Justice System (CJS), primarily giving rise to the electronic or e-Docket system. The e-Docket system, which is said to take up to at least 10 to 20 years to fully implement, faces its own hurdles and dilemmas, not least as a result of police officials preferring the old traditional paper-based dossiers, thereby resisting the technological movement. In

addition to the e-Docket system, the CJS has reeled in principles from the private sector such as outsourcing and New Public Management (NPM) philosophies in order to effectively regulate docket management as well as accelerate court processes. The research problem, which is twofold, first aims at examining case docket reform ie how case dockets have transitioned from the apartheid era to the constitutional dispensation and whether or not this has been effective. This issue will be answered in Chapter Two, in which case chronology will be discussed. The second concerns the adoption and implementation of techniques borrowed from the West, such as the implementation of ICT projects and the success of first world systems in a country like South Africa with a turbulent socio-economic background. This problem will be addressed in Chapters Two and Three in which the e-Docket will be introduced and critically examined against South Africa's CJS strategies. Arguably, the adoption and implementation of Western ideologies and first world best practices in South Africa may not be feasible given the current landscape of constrained and limited resources, both financial and in the field of human capital. Additionally, the climate is further exacerbated by low levels of computer literacy and an overall scarcity of skilled and knowledgeable workers required to operate sophisticated ICT systems. Until the e-Docket system is fully implemented and effectively operational, the labour intensive paper-based dockets will continue to bear negative ramifications including mismanagement: ie negligent docket handling, lost or stolen dockets and the practice of bartering dockets in exchange for gratuities. The latter provides a host of repercussions for the interests of stakeholders including egregious violations of fundamental human rights. The aim of this research is to understand the rationale behind maladministration and ineffective governance of dockets in the democratic era, as well as the effect it has on stakeholders. The research provides recommendations in which the administration of dockets may be adequately regulated. Therefore, police dockets represent much more than a kneejerk reaction to crime; dockets regulate the entry points into the criminal justice system pipeline. South Africa needs to invest in its greatest asset of all − its human capital, by developing and equipping its people to embrace the technological revolution. Have we sunk our heels in too far into the 'splendor' of Western ideologies of technology and privatisation or is it time that South African leadership adopts accountability and charters a course with an authentic framework best suited for South African problems?

CONTENTS

Chapter One: Global perspectives and Guidelines of world best practices for Case Flow Management

The criminal justice system in South Africa faces multiple issues and quandaries. A case docket in the context to this mammoth landscape only forms a minor part of the criminal justice system. So why then has a whole minor dissertation been dedicated to case dockets? The fascination and interest in case dockets grew as the researcher, who aspires to becoming a public prosecutor, often sat in on public discussions that revolved around South Africa's criminal justice system and how ineffective the system was owing to issues such as corruption and negligence. Often participants raised instances where dockets had been traded in exchange for gratuities as court clerks, police officers and prosecutors were often seen as malleable once money had been brought into the equation. After some research, the sheer gravity and extent of the issue manifested to the researcher. Multiple newspaper articles reflected on negligent docket handling, innocent victims of docket theft and docket loss as well as the political power play in the discretion to prosecute − often resulting in the disappearance of dockets. The culmination of these issues had further knocked holes in the criminal (in)justice system of the country, by unravelling some of the core issues ie problematic governance and leadership, accountability of institutional actors and the transparency of the courts. The issue of dockets had appeared in a few South African literatures which have not fully covered the issue as a whole; often journal articles would insert a small piece about dockets in relation to the larger subject of the article. Thus, the larger picture had begun to unfold about dockets in relation to the larger criminal justice system − it had been recognised as the entry ticket into the justice system. In the absence of a case docket, the criminal justice system ceases to exist. In the bid to reform the criminal justice system, the point of departure should be to address the issues pertaining to dockets. As fundamental substrates of both criminal and civil justice systems, the importance of dockets, the manner in which they are administered and the institutional actors responsible for docket management should be documented in an academic space, hence the purpose of this minor dissertation.

The chosen methodology for this research study is a desktop literature study, the reason for which is to elaborate on some of the current debates and discussions

on the administration and governance of case dockets. Although data gaps exist on the subject matter, an empirical study on why institutional actors allow docket maladministration to become common practice may have required a greater time period to garner the desired results than expected, thus time constraints and the continuous data gaps have been some of the limitations to this study. Docket management proliferates into multiple disciplinary fields, hence this research study has drawn from various disciplines viz Sociology, Criminology, Law and Public Administration.

As dockets oscillate from police stations to courts it is imperative that dockets passing through the court system are effectively monitored and managed. Case Flow Management (CFM) which oversees and structures case flow is dependent on a myriad of factors ranging from state resources to human capital. Over the decades latest developments and trends in CFM have influenced the functioning and business organisation of courts globally. The adoption of several techniques and tweaking of systems are said to enhance CFM and court output. The five techniques which courts have adopted include: Case screening or docket control, judicial intervention, attorney and advocate support, specialisation of courts and integration of Information and Communications Technology (ICT). What will be discussed in this chapter are the diverse international developments and guidelines for world's best practices for Case Management Systems (CMS) drawn from European, North American and Namibian justice systems. Additionally, the impact of ICT projects on the administration and access to justice will be analysed.

1. INTRODUCTION

In order to understand the complexities of the world in which we live in and to have a grasp on its ontologies, we need to have a channel of communication. Communication is used to express the ideologies of a particular stance, social group or of an individual within a circle of collective consciousness. Communication entails the dissemination of ideologies from one person's consciousness to a recipient who internalises the incoming information received. Communication may present itself in various forms; it may be seen as discourse analysis or semantics of cultural texts and writings and group or social practices (Weedon, 1987) and thus very rarely do we personify documents and records as 'living' embodiments − possibly because we take for granted how invaluable and indispensable such documents and records are. Documents move amongst a multitude of people affecting and influencing the lives of people along the way, as documents and records become 'alive' with information. Because paper records and archives are overlooked, it is often forgotten that documents could bear any significance for human interaction. By virtue of being documents, case dockets are invaluable tools for human interaction. The following topics will be addressed in the section below: What are case dockets; how case dockets are managed; and why case docket management is so crucial.

Prior (2008) articulates that: 'A document is not just perceived as a container for holding information, but assumes the role of proxy in social settings and organisations as it connects multiple social actors together'. It can be assumed from Prior's interpretation that the fluidity of the term 'document' does not seem to encapsulate the true spectrum and unique value of a document in relation to its purpose as an agent for human interaction. A case file or case docket ('docket') is no exception when it comes to being described as an invaluable 'living document'. Case files and dockets are the nuclei that serve as the data base which contains a wealth of information, irrespective of its position in private or public spheres. Within the legal milieu, a docket in criminal proceedings can be defined as 'an official document in which a record is kept of a reported crime and the investigation conducted into such a crime' (South African Police Services, 2002). In American civil litigation, however, the term 'docket' refers to 'an indexed list of documents that are held within a case file and are formatted in either Portable Document Format (PDF) or Hypertext Markup Language (HTML)' (Lopucki, 2009). Dockets breathe life into criminal and

civil litigation as they are fundamental components of justice. For the purposes of this research paper, the focus will primarily be on case dockets emanating from the Criminal Justice System (CJS). Moeain (2015) provides that 'written texts, such as police dockets produced through domain-bound literacy practices, have the "institutional freedom" to traverse, operate and have effects in multiple social spaces in the criminal justice system'.[1] Therefore the 'text production' of which Moeain (2015) speaks can be interpreted as the dissemination of information through the production of a case docket as a product of communication between the police and citizens. It could be further understood that case dockets represent textual narratives or transcripts of information relating to the occurrence of crime given by victims or complainants which could only be re-enacted through the docket. If a docket embodies a transcript of the occurrence of a crime it is therefore of utmost importance that the sanctity of case files is adequately regulated, monitored and controlled. Case file management must be executed with utmost precision, promptness and skill; therefore a deeper understanding of the systems and protocols which regulate docket management must be examined.

2. CASE MANAGEMENT SYSTEMS

What will be addressed in this segment are the problems relating to docket management as well as the types of systems in place which are said to improve and enhance docket management. The need to create an effective case management system (CMS) has confronted many private and public sectors over the past decades. Inept records management is thought to decelerate the work performance of public institutions such as hospitals and courts. Thus at the peak of the 1970s the necessity of having an efficient and professional administration system was seen within the trial courts of the developed world. A need had been identified for the construction of an effectual court system that would aid in the execution of day-to-day tasks.[2] Case dockets spends most of their 'life' being stored away in filing cabinets or oscillating between institutional actors, which is why efficacious case management has been

[1] Moeain, Abdul. *Revealing the Janus Face of Literacy: Text Production and the Creation of Trans-contextual Stability in South Africa's Criminal Justice System*. (2015) Published Ph.D. thesis. University of Cape Town.

[2]Case Flow Management Guide of Michigan Trial Courts: Reporting Forms and Instructions for District Court. Lansing, MI: State Court Administrative Office.' (2003)(p.1-67). Available at: *http://www.justiceforum.co.za/caseflow_man_USA.pdf (Accessed 07-09-2017)*

vehemently advocated. The Case Flow Management Guide of Michigan Trial Courts has defined Case Flow Management (CFM) as 'the court supervision of the case progress of all cases filed in that court. It includes management of time and events necessary to move a case from the point of initiation (filing, date of contest, or arrest) through disposition, regardless of the type of disposition'.[3] Predominantly, court clerks and judges are at the administrative forefront of CFM; however court clerks act as gatekeepers responsible for filing, maintaining, assessing and disposing of records and documents.[4] In contrast to South Africa, where docket control is exercised by prosecutors, in other legal systems throughout the world judicial officers regulate docket control. (This will be expanded on in Chapter Two under prosecutorial powers of the National Prosecuting Authority.)

CFM reflects on and is indicative of the operational organisation and work ethic of the institution in question as it mirrors leadership capabilities, workload and business acumen. Judicial performance is premised on the merit of its administration and organization, since judges are at the administrative forefront of the organisation. The logistics and management of case files contained within a courthouse are quintessential to the administration of justice, as case files are often thought to move in a conveyer belt-like fashion from one individual to another in a linear format. In fact, this is far from accurate, as case files in courthouses navigate through a labyrinthine court system encompassing a nexus of assorted institutional actors. As many justice systems have transcended into Integrated Justice Systems (IJS), various institutional actors (judges, clerks, counsel, prosecutors, and the police) are mandated and held responsible for the coordination and safeguarding of case files. However, a diverse mix of institutional actors and complex court processes make tracking and managing of cases a challenging job. What makes this challenging is the constant movement of dockets which may devolve into a multiplicity of issues ie case files being misplaced or disappearing between the hierarchy of courts and lattices of role players. CFM strives to mitigate the rigorous process in which dockets manoeuvre through the system, in order to optimise court functionality and provide mobility to cases. Where courts lag on dispelling cases from the system, it results in the stifling of case flow and holds up the mobility of cases. CMSs provide the court with an

[3] Ibid.

[4] Ibid.

inventory of statistical information and raw data on historical operations and developments – the benefit of having access to such information can be used in future preventative strategies against backlogs and case overloads. The disposition of case files inherently affects the operation and networking of the courts as CFM provides an overview of court performance enabling the courts to optimise planning, calendaring and diarising of pertinent daily functions. In order for a court to determine if a backlog has materialised, court clerks must consult historical data and refer to a checklist which indicates: case age, pending cases, adjournments, resources and court control over cases.[5] Langbroek (2016) has ascribed the meaning of a backlog as 'a numerical account (whether in figures or percentages) of cases that have not yet been finalised within a given period or timeframe – generally within one to two years'. Without optimal planning and effective CMSs in place which generate continual statistics, it would be difficult to truly estimate the quantity or severity of court backlogs. In essence, without a competent CMS, the court may be incapacitated from expeditiously executing its duties in finalising matters and dispensing justice.[6] Furthermore the improper monitoring of case files or an unforeseen increase in workload could bring about a bottleneck effect which decelerates court progress and hinders due process.

In order to facilitate proper and adequate control of cases, global court trends have enacted five techniques to assist in case flow management, namely: 1. Case screening or docket control; 2. Judicial intervention; 3. Attorney and advocate support; 4. Specialisation of courts; and 5. Integration of Information and Communications Technology or ICT. Drawing on the work of Fontana (2011) each of the techniques is considered in more detail below:

1. *Case screening or docket control*

A tool used in CFM has been 'docket control'. This concept encompasses judicial discretion over which cases to hear and which cases not to hear in order to alleviate slow and bottlenecked processes. Docket screening is premised on 'case screening' and has been used by many constitutional courts in countries such as Israel, Hungary, India, Russia, Germany and Canada. Predominately, docket control has been used in

[5] Ibid. (p.5)

[6] Case Flow Management Guide of Michigan Trial Courts: Reporting Forms and Instructions for District Court. Lansing, MI: State Court Administrative Office. (2003) at 4. Available at: *http://www.justiceforum.co.za/caseflow_man_USA.pdf* (Accessed 07-09-2017)

the United States by the Supreme Court and in South Africa by the Constitutional Court. The almost total control inherent in the United States Supreme Court since 1988 was reflected in the South African Constitution: '[T]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right' (Fontana, 2011). As courts are often burdened with backlogs owing to the nature of certain cases which may require a greater amount of time and resources, other cases remain stagnant to the detriment of litigious parties. Judicial officers are then tasked with interpreting and developing the law under very limited time constraints – this in turn may create rapidly generated yet low quality case law. Time constraints have been identified as one of the fundamental factors that must be taken into account when exercising docket control, as they determine the quality of judicial reasoning given in a judgment and the success of CFM.

If the discretion to hear a matter is left to the judicial officer, a degree of impartiality must be exercised. Automated systems performing docket control may not present the same bias as human counterparts. Thus, docket control is a convoluted process by virtue of ambivalence of judicial officers, as the fear of the unknown overrides the utility of this doctrine. Docket control is, as Fontana (2011) puts it, reliant on a number of factors:

- Who has the power to engage in judicial review;
- When judicial review can occur;
- Whether judicial review can take place in the absence of a real case or controversy; and
- Who can initiate disputes

Judicial review vests great inherent power in judicial bodies which has the potential to create intentional or unintentional pre-bias for matters heard before the presiding officer. In terms of the third bullet point 'whether judicial review can take place in the absence of a real case or controversy' the researcher is of the opinion that if judicial officers are meant to articulate a sense of impartiality within a legal arena in hearing disputes, docket screening diverts the judicial officer from that impartiality. Judicial officers may choose to hear matters with which they have an interest and or matters which appeal to them. Therefore a negative consequence of docket control relates to the judicial bodies empowered to exercise such power and their liberty to

dispense such power at the expense of others. Additionally, the issue becomes complicated as the appointment of judicial officers is performed by political figures (Fontana, 2011). The discretion to hear executive matters as opposed to public hearings has at times aided the executive to further politicised agendas. It is a matter that has called for urgent attention.

The political dynamic of a country may sway the discretion of the judicial bodies in favour of hearing cases with political undertones; as a result this detracts from the objectives of CFM and the courts' bid for transparency and accountability within the justice system. Should the courts adjudicate matters which relate to political notions the court loses its standing in society as the nucleus for all that is equal and just. The solution seems to vest in the establishment of a completely dichotomous relationship between the executive and the judiciary in the exercise of docket control. For example, the United States Supreme Court has on occasions in the past avoided adjudicating over matters which are politically 'polarised' such as to deny the hearing of constitutional issues related to the Vietnam War (Fontana, 2011). Executive oversight hands itself a double-edged sword − on the one hand it aids in concretising accountability and transparency within the courts; however on the other hand, the danger exists that political oversight may invade judicial proceedings and intrude on judicial independence.

2. *Judicial intervention*

As with docket control, judges have the discretion to disallow continuous and unwarranted adjournments as judicial intervention is crucial to avoid any circumstances which may cause unnecessary delays and thereby impede case flow.

3. Attorney and advocate support

Judicial officers and clerks are responsible for the internal management and flow of cases within the courts; similarly, attorneys and advocate are empowered to regulate and control the flow of cases outside court. Therefore, if a litigious matter can be settled out of court, attorneys and advocates are prompted to settle the case externally without having to employ the services of courts as an intermediary, which in turn minimises backlogs and bottlenecks, allowing new matters to be enrolled.

4. *Specialisation of courts*

A national case study performed in the United States in which specialisation techniques were implemented within the domestic violence courts demonstrated the swiftness of cases being filtered through the courts aided by tracking mechanisms and integrated information systems. Specialised domestic violence courts had trained clerks to familiarise themselves on the subject matter of cases in addition to utilising limited resources. This educational strategy enhanced the lucidity of the case screening process. The outcome of this exercise was to equip clerks with the knowledge needed to execute case-sensitive matters such as domestic violence with dexterity (Keilitz, 2001). Despite the existence of information systems within the court realm, human resources and human capital remains the primary driver behind an effective CMS. The specialisation of skills and courts demonstrates that minor strategic implementations such as equipping staff with the right tools can aid in CFM with less reliance needed on techno-systems. Furthermore, in addition to domestic violence courts, other specialised courts ie labour, commercial crime and drug courts offers a concentration of specialised skills which can assist in the finalisation of certain cases.

5. Integration of Information and Communication Technology (ICT)

Rapid transition into this transformative era of technological advancement reciprocates with manifold benefits for its users. Public institutions such as courts are inclined and often pressured into changing business practices that align with modern standards of technological advancement. As courts grapple with issues of backlogs, bottleneck effects, and case stagnation, courts have looked to technology to assist in daily functions, as the manner in which cases are managed has a ripple effect to a larger pool of stakeholders. Digitalisation of CFM has been beneficial for consumers external to court proceedings − these include: students, researchers and the media. These consumers, who may have a keen interest in litigious matters and landmark case law, have been able to keep abreast with litigious matters through online portals. In the South African context, transparency of courts is imparted through online portals which drive forth online legal repositories such as Southern African Legal Information Institute (SAFLII), LexisNexis and Juta which encourages engagement between the courts and consumers.

The introduction of automated systems within the legal arena aims at minimising the possibility of maladministration, corruption and loss of documentation. ICT projects are designed to instil confidence and trust in the justice system. As one of the primary objects of various justice systems, public confidence is by far the most apical objective. By providing reassurance to the public of the existence of transparent and engaging courts, those who demand access to information will be appeased. Access to information is one of the most fundamental rights enshrined in many international (and national) laws, conventions and treaties. The fundamental ability to access state held information forms the window through which social conduct can be viewed, and acts as a platform for transmitting and disseminating public and individual affairs. In the next section the integration of various global ICT projects will be discussed in relation to alleviating issues faced within court systems throughout the world. In addition to ICT's functionality within the courts, the research will examine whether or not a correlation between ICT in courts and the protection and preservation of human rights exist.

3. INFORMATION AND COMMUNICATIONS TECHNOLOGY IN GLOBAL JUSTICE SYSTEMS WHICH AID CASE MANAGEMENT SYSTEMS

> 'It's always unpredictable saying what the docket will look like in 10 years . . . it could be high-tech, biotech . . . .If it were present-day issues, you have to take it case by case.' – Carl Tobias

Technology has created an ever expanding landscape that branches into and affects every facet our lives. Technological advancements within the workplace have diminished the need for raw manpower as they simplify, ease and augment work performance. Global initiatives which aim at modernising criminal justice systems have looked to technology to circumvent the communal issues faced by courts on a daily basis. Often these issues relate to bottleneck case flow, case management and a heavy reliance on paper-based case files with its attendant burdens. Countries, regardless of economic, social or geographical standing, have propagated the modernisation of legal court systems in order to mitigate court dilemmas. This section intends to illustrate the evolutionary cycle of case files from the perspectives of international transformations and trends. Furthermore, it will elaborate on how these improvements and transitions have both aided and failed the courts, institutional actors and consumers with management and administration of case files

within the legal milieu, as well as the effect technology has had on the rights of consumers.

In the late 1970s the United States had been one of the first countries to effect a paradigm shift by conceptualising the implementation of information systems into the justice system in order to alleviate the burgeoning bottlenecks faced by courts. Similarly, in 1991, Singapore followed the American example as the incremental number of case backlogs in Singaporean courts had stimulated a dire need to integrate information technology systems into the legal milieu (Rosa et al, 2013: 241). This paradigm shift set in motion the transition from paper-based case files to information systems and electronic platforms in order to reduce inaccurate data input and loss of case files. The adverse effects of inaccurate data and an absence of case files had impeded the passage of case movement through the justice system, with a rippling effect on court calendars, schedules and business intelligence.[7]

As the techno-age of the millennium set in, new human rights were charted and many bureaucratic states conceptualised frameworks in which transparent and accountable governments (including governmental institutions) would preserve and protect these rights. A court system is deemed 'transparent' when:

> [All] relevant aspects of its operation are revealed to policymakers, litigants and the public in forms that can readily be comprehended; court systems can become transparent only when court files are maintained in relational electronic formats and the public has free, technologically unfettered access to their contents' (Lopucki, 2009).

It would appear from Lopucki's definition of transparent courts that, in the modern age, protecting and accessing rights are reliant on technology. Generally, however, the intrinsic power vested in a transparent court system empowers, enlightens, and encourages the public, and legal practitioners by enabling citizens to engage in the legal system through shared information made easily accessible. Transparency of courts enlightens citizens on due process, the legal domain and encourages public participation and reinforces the cogency of *bona fide* practices (Lopucki, 2009).

It can be thought that courts animate the embodiment of the rule of law as judicial officers are often referred to as the gatekeepers to democratic principles and egalitarian virtues. Principles of openness and transparency are emblems of the

[7] 'Case Flow Management Guide of Michigan Trial Courts: Reporting Forms and Instructions for District Court. Lansing, MI: State Court Administrative Office.' (2003).1-67. Available at: *http://www.justiceforum.co.za/caseflow_man_USA.pdf* (Accessed 07-09-2017)

autonomy of courts by curtailing corrupt activities, legal uncertainty and deprivation of information held by the state. Therefore, courts have a mandatory obligation to publish and disseminate accurate information held by the court − which is essential to the integrity of judicial proceedings or benefit of an interested party, whether directly or indirectly. Hence, electronic or e-governments were created in order to integrate (the craze at the time ie technology) as the saving grace, serving as an intermediary. E-government has been defined as 'the use of information and communication technologies, and particularly the Internet, as a tool to achieve better government' (OECD, 2003). The obligation to disseminate state-held information stems from the provisions enshrined in, for example, Article 6 of the European Convention on Human Rights (ECHR)[8], Article 19 the International Convention on Civil and Political Rights[9], Article 9(1) of the African Charter on Human and Peoples Rights[10] and in South Africa such right is set forth in section 32 of the Constitution.[11]

Irrespective of the pressure placed by these treaties and international agreements on governments, the feasibility and financial situation of a country should always bear reference to the integration of ICT projects in making its courts transparent and accessible. Thus, governments oscillate between implementing information systems and not implementing ICT within justice systems as they often lack the necessary resources or fiscal power to successfully implement or maintain these systems (Slowes, 2012). The advances and trends in North America and Europe have been both fascinating and intriguing as the West has continued to set the standards for techno-justice systems. The following unit will elaborate on e-government models of these countries ie PACER (North America) and e-justice

[8] Art. 6 ECHR (1) 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

[9] UN General Assembly Resolution 2200 A (XXI) of 16 December 1966, entered into force 23 March 1976.

[10] African Charter on Human and Peoples Rights (African Charter), 27 June 1981, CAB/LEG/67/3. Rev. 5, 21 I.L.M 58 (1982)

[11] Promotion of Access to Information Act 2 of 2000, s 32(1): Everyone has the right of access to (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights. (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

(European systems). Furthermore, owing to the lack of an African perspective, e-policing in Namibia, which has drawn insight from international e-government systems, will be examined (since Namibia bears similar geo-politics to South Africa).

3.1 North American Integrated Information Systems − PACER

America had led the rest of the world into the realm of technological advancement of justice systems as it strived to move away from the paper-based docket and case files to swift electronic systems. Although paper-based dockets had left a paper trail for auditing and search purposes, often they had been subject to loss, destruction, negligence, storage issues (for instance space and size of storage rooms), aging of documents (inks fading over time) and also environmental factors such as heat and cold which may deteriorate the state of the document. Figure 1 extracted from Crime in San Francisco: A Study of the Police Court Docket − December 1924 through February 1925,[12] Heinzen & Rypins (1927) depict the paper-based docket system used in the 1920s. It can be seen that the method of court documentation and record keeping, in contrast to the modern electronic information systems used by courts today, differed exponentially. ICT systems are designed to cater for the fast-paced, rapid response action demanded by courts and business practice today as opposed to labour-intensive, manual documentation.

INDEX AND DOCKET OF THE POLICE COURT

	In the Police Court: Calendar Filed Date	In the Police Court: Action Number	Assigned Department No.	Transferred	The People of the State of California vs. Names of Defendants	Offense Charged	Defendant in Custody or Released on Own Recognizance Cash Bail Bail Bond	Complaint Filed Date
1	Feb. 17, '26	M-399328	4	.....	Davis, Lillian	Vio. State Veh. Act, sec. 113	Cash $5	Feb. 17, '26
2	Feb. 18, '26	F - 40849	1	4	Demenighini, Francisco	Vio. Section 288 P. C.	Cash Bail $1,000	Jan. 28, '26
3	.....	M-399484	1	.....	Doyle, William	Vagrancy	In custody	Feb. 18, '26
4	.....	M-399514	1	.....	Dahlgren, Ernie	Vio. Ord. 3302	Cash Bail $10	.....
5	Feb. 18, '26	M-399524	1	.....	Dwyer, Robert	Vio. Ord. 3302	Cash Bail $10	.....
6	Feb. 18, '26	F - 40856	1	.....	Davis, Harry	Vio. State Poison Law	In custody	.....
7	.....	.....	.....		.....	.....	.....	.....
8	.....	.....	.....		.....	.....	.....	.....
9	.....	.....	.....		.....	.....	.....	.....
10	.....	.....	.....		.....	.....	.....	.....

	Plea	Judgment: Order Dismissed—Sentence—Held to Answer—Discharged	Judgment: Entered Date	Names of Defendant's Counsel	Memorandum
1	.....	.....	.....	.....	Bail forfeited 2/17/26
2	.....	Action Dismissed, Defdt. Discharged	Mar. 16, '26	.....	No B. W.
3	Not Guilty	Imprisoned in County Jail 90 days	Feb. 18, '26	.....	Bail Cash $2,000
4	.....	Action Dismissed, Defdt. Discharged	.....	.....	.....
5	.....	Action Dismissed, Defdt. Discharged	.....	.....	.....
6	.....	.....	.....	.....	.....
7	.....	.....	.....	.....	.....
8	.....	.....	.....	.....	.....
9	.....	.....	.....	.....	.....
10	.....	.....	.....	.....	.....

Figure 1: An example of an American case docket from the 1920s (Source: Heinzen & Rypins, 1927: 78)

[12] Heinzen, Henrietta & Rypins, K. Rhoda. 'Crime in San Francisco: A Study of the Police Court Docket - December 1924 through February 1925.' *18 Am. Inst. Crim. L. & Criminology* 75 (1927-1928) (75-91)

The initiation of ICT within the federal courts commenced with an umbrella-structured Courtran System, a multidimensional system encompassing 36 major and minor applications that aided sub-branches of law and administration such as criminal and civil litigation, bankruptcy, appeals, court management and research (Nihan, 1981). The Courtran System provided courts with the much-needed capabilities to improve court management, administration and court practices and procedures. Since the powerhouse of the Courtran System was centralised in the capital, Washington D.C., it enabled interconnection with courts from an array of counties and states. This IJS approach allowed collaboration with multiple counties and states in which data could be evaluated, retrieved and downloaded locally (Nihan, 1981). Furthermore, Nihan (1981) posits that the purpose of implementing technology in American court systems owes its prominence primarily to three crucial objectives:

1. Operational support and efficient CFM in order to reduce bottlenecks;
2. Dissemination of information held by the court for public use;
3. Research of court performance, based on output generated by automated systems providing empirical data and statistics.

Following the inception of the Courtran System, the Michigan Supreme Court's Administrative Order 2003-7 (since repealed) summarised the court management principles as follows:

1. Case flow management entails the timeframe in which cases are monitored and controlled from initial phases of registration to adjudication.
2. The effectiveness of case management systems [is] dependent on the recording of case progress including adjournments made.
3. Case management is a reflection of headship and judicial support.
4. Case management can be utilized as a tool to deduce information and thereby enabling clerks to draw parallels between performance and development of case and court management.[13]

According to Nihan (1981), the Courtran System invoked advantageous court administration through information and data-sharing networks, reduction of

[13] Case Flow Management Guide of Michigan Trial Courts: Reporting Forms and Instructions for District Court. Lansing, MI: State Court Administrative Office. (2003). (preface) Available at: *http://www.justiceforum.co.za/caseflow_man_USA.pdf* (Accessed 07-09-2017)

repetitive tasks, a reduction in mistakes and manipulation of data to further malicious motives; however, with constant usage and rapid technological advancement, the system soon required an upgrade, and consequently, a new system was established – PACER.

Public Access to Court Electronic Records or 'PACER' currently stands as the leading court system implemented in most United States justice systems since 1997. Prior to the inauguration of the PACER system, access to court-held information, case files and dockets was paper-based and thus stowed away in courts, inaccessible to stakeholders and even certain institutional actors. The radical transformation and innovation of technology has woven its way into public spheres owing to its superior processing and data storage capabilities. Initially, communications between parties and counsel were performed through postage and mail or by making physical appearances in court in order to retrieve the desired case files. The extent of technology being used allows legal officials to communicate without having to set foot in a court building as the use of technology has expanded from court settings to include live video streaming, which has been used in criminal matters, whereby accused persons' arraignment can be done via video technology (Kelso, 1998). However, the establishment of electronic systems such as PACER has afforded legal practitioners the opportunity to exchange legal documents on a digitalised platform in which files and documents can be submitted electronically through electronic filing or e-filing (Branting, 2002). The system has also been shown to save paper, postage costs and sheriffs' fees. Moreover, automated CMSs are said to save time by calendaring case progress through electronic notifications, whereby an interested party does not have to contact clerks in order to determine the progress or status of a matter, but can access the information online.

Access to PACER is not limited to counsel and practitioners, but is inclusive of and integrates multiple consumers, which allows for the transmission of information and data through the channel of communication between users. Agencies or institutional actors in an integrated system include law enforcement departments, social services, correctional services, probation and parole officers, courts, prosecutors and public defenders. The multiple agencies are unified by integrated automated systems which promote the fruition of legal proceedings external to court proceedings and thus minimising the number of cases placed on already strained

court rolls (Kelso, 1998). The latter strategy may eliminate the transit of paper-based documents and files between stakeholders which has the added benefit of obviating document loss. However, in retrospect the disengagement between counsel, consumer and the courts creates a human-less environment within the legal community. It must be conceded that technology has to a degree stripped the court of its claim to be the nucleus that embodies justice and the arena of legal disputes; it has tended to become the legal repository of electronic files and documents and not the propagating engine of the rule of law, as human activity is being usurped by the advances of technology.

The cost implication of making court documentation electronically available for the public, has often led to courts dishing out money in order to sustain ICT projects. The result of an inability to access court held information may hinder the technological transparency and openness principles of courts. Thus, courts have diversified by seeking cheaper alternatives to the production and labour costs associated with implementing ICT projects. Court officials suggest that the solution lies with the privatisation of IT systems. Lopucki (2009) suggests that in order to realise a transparent court system, private enterprises such as Bloomberg provide access to thousands of already downloaded court files for consumers to utilise. In exchange for a small gratuity of 8c (US) per page in order to download content, privately owned software giant Bloomberg provides consumers with court-held information and case files to the public. By privatising ICT projects, courts have been able to mitigate the cost factor for consumers of PACER and Automated Access to Court Electronic Records (AACER). As part of an integrated strategy, courts are of the view that averting funds into the private sector will provide cost effective high calibre technological solutions.

The benefit for enterprises such as Bloomberg is the high profit margin and tenders given by government. Thus, is privatisation always the best solution for public institutions? Furthermore, the sustainability of ICT projects rests on the accessibility of techno-systems to the paying consumers. Consumers would need to have access to computers in order to utilise PACER and AACER. Lopucki (2009) further provides that should a consumer not wish to download the content, the online portal sets out the facts and information of a case and equips the consumer or user with the chronology and status of the case in question. Does this not imply that

consumers have free access to documents? How then would the courts make a profit off document downloads if consumers are able to access case chronology without having to pay for it?

The problems faced by users of PACER have been the inefficacy of search functions, in that many of the digitalised documents did not allow for the execution of word-specific searches because PDF files had been scanned and not entered electronically on to the system. This has hampered access and information not only for parties to litigation but researchers as well. Researchers play an integral role in the development of court systems and provide public information on these developments (Lopucki, 2009). The transparency of electronic court systems is regulated by the Legal Case Management System or LCMS and is reliant on constant equipment upgrades, adequate maintenance of systems and uploading of current case progress online. Unfortunately, updating case progress on a daily basis is seldom done as it requires hours of labour-intensive manpower (Lopucki, 2009). At best, the issues faced by the name-matching system involve syntax and incorrect input of spelling and grammar when a user searches for a required document or case file. Spelling, punctuation, commas, spacing and so forth have been challenges to the algorithm regulating and controlling the case file system. The issue has been rectified through evaluation of the algorithms by including asymmetrical spellings and normalising the incorrect spelling with the use of suggestions (Branting, 2002). The search function issues have been remedied through an allegorised name-matching system which identifies and provides the user with the names of the parties, attorneys and judges involved the matter. This mechanism has helped eliminate potential conflicts of interest in which a judge or attorney may have a financial or personal interest in a case. In the event that such situation arises, either the attorney or judge must disclose such information and recuse himself or herself from the pending matter. The latter demonstrates how electronic systems have at times aided in combating corruption, ethical violations and ensuring a transparent court system (Branting, 2002).

Since the implementation of the parent system, PACER, many smaller island projects have been introduced in various regions throughout the United States. A distinguished system worth mentioning is the CMS implemented in Minnesota in March of 2003. Before the CMS and in the early 1980s Minnesota had been using

the Trial Court Information System or TCIS. However by 2000 the system had already begun to become *passé*. An evaluation conducted after implementing the CMS showed that the output and fundamental benefits of CMS were accessibility and reliability of information required by users such as judges, counsel, the public, and clerks. Thereby, the creation of text templates and drop-down menus provided user-friendly functions for new and old users of CMS had resulted in fewer system errors. (Branting, 2002).These 'ready-made' functionalities helped users and consumers better understand the system, and thus clerks spent less time having to correct mistakes and incorrect data entries.

The five techniques used to assist case flow management have been well identified within the American system and have proven successful in some instances; however many gaps still remain. Automated systems may fall prey to cybercrimes and hacking and therefore officials must be aware of the vulnerability electronic repositories possess. Security features are important as court documents may contain compromising and sensitive information; therefore the sanctity of information contained within these electronic repositories must be handled, stored and treated with the highest regard. A separate system for public users and institutional actors must be used in order to augment the credibility of these electronic repositories. The state-isolated American system has flourished, given the various laws and regulations in each state which differ from the next. In contrast to the federal American system, the system employed by European countries strives to inculcate a single model which conceptualises a uniformed Eurocentric justice system. The discussion now turns to a closer examination of the e-justice system.

3.2 E-justice: a Eurocentric approach

In the bid to establish a Eurocentric automated system that does not deviate from the objectives of other global electronic systems, ie promoting the advancement of electronic systems that allow for: transparency, reliability, self-service options, online payments, claims and electronic channels for communication, the adoption of a fully-fledged IJS which permeates across borders had to be inculcated in European justice systems. The diversity of European justice systems is sprawled across the continent; in consequence transnational political arrangements have been developed to give rise to the Eurocentric approach adopted by many courts which emphasises a heterogenic mix of techniques employed by several countries on the continent. The

integration strategy posits a linkage between European Union (EU) member states which permits the enforcement of a judgment not only within the area of jurisdiction the judgment has been handed down but across contracting states to the EU.

Drawing on Langbroek (2016) the guidelines set out for the European courts' framework in 2016 involved the collection of data from 12 countries interested in enhancing CFM − Austria, Belgium, Czech Republic, Finland, Germany, Estonia, Italy, Netherlands, Portugal, Slovenia, Spain and Sweden. Similar to the American courts, European courts have found that the incorporation of the five techniques used to assist CFM has radically transformed global legal practice. Before the implementation of the comprehensive European model, specialised courts were deemed much harder to be afforded judicial oversight in transnational and cross-border cases in consequence of legal pluralism. Transnational claims are costly, as the exchange of communication and information across borders varies significantly in price ranges. But by investing in specialised courts, European courts have made use of limited resources and the application of expertise to cases, which has enhanced case flow and the quality of judgments. The quality of judgments by specialised courts in turn facilitates high-quality precedents and enhances the nature and calibre of justice being dispensed by the courts, given the pressures experienced by the courts. The work ethic factor discerned by European courts had illustrated a need to apportion the workload among officials throughout the numerous channels that cases pass through. Essentially, the courts campaign for the division of labour in order to ensure effective functioning at all levels and seek a collaborative and harmonious rapport.

Langbroek (2016) posits that effective case management is augmented by a multitude of factors in addition to the division of labour, specialisation of courts and the interplay between court officials; and mechanisms have been put in place to monitor performance targets and court statistics. The latter generates time frames and guidelines that may aid judicial officers in facilitating case screening and adjournments. In order to assure the quality of proceedings and the elimination of mistakes, European courts afford parties an appeal after the first instance; fortuitously for some litigants, in some cases two or three appeals have been granted by the courts. However, these appeals have swelled the court rolls and thus European courts have imposed restrictions upon the number of appeals granted in order to

adequately facilitate and ensure due process for all. In Sweden, courts evaluate the inherent nature of pending cases to establish time frames in which to adjudicate matters − usually, a case is deemed to be backlogged if it exceeds the designated time frame for adjudication. In Finnish systems, however, pending cases are determined by a 'weighted caseload system' which takes into account the resources and judicial oversight needed in cases which are 'heftier' in substance and are therefore allotted to special categories ie criminal, civil, insolvency and so on. These techniques aid in the allocation of time and resources to cases which justify greater attention and carry greater importance.

The European model, in contrast to national trends, narrows in on preliminary stages of proceedings, which circumvents numerous appeals which ripple into unnecessary delays. The grander scheme behind a comprehensive uniform European model was to avoid island projects and an overall disjointedness of national systems. Thereby, a uniform system called the Electronic or 'e-CODEX' system was piloted from 2010 until 2016 when it succumbed to complex technicalities that inevitably caved the system inwards (Martínez & Abat, 2009; Rosa et al, 2013: 245). The technical and judicial system failures included safety and transmission of data, electronic signatures (which are precursory to e-filing and submission of online claims) and the interplay between disparate legal systems of European countries (Langbroek, 2016: 37). Despite the technical glitches in the system, the need to have a transnational system in place that facilitates cross-border electronic justice is vital for the access to justice. With issues of cybercrime and hacking, it is no wonder the EU has pulled the plug on the e-CODEX system, as the sanctity of confidential court documents was jeopardised owing to inadequate security measures. However, to date, Austria remains the only country which extensively uses e-filing, in contrast to other countries which seldom or very rarely make use of such a management system (Reiling, 2009: 4). The added value of e-CODEX, however, had been its capacity to generate statistical and fiscal information such as court performances, fines and bail payments, inclusive of monetary claims, that could be settled online.

Belgium

The Belgian courts were hardly any different when it came to radically shifting paradigms from paper-based court documentation to rapid and reliable digitalised platforms. Courts had been burdened with the inadequacies of the criminal system; in

a single instance it had taken nine years to try a paedophile. In the 2000s the Belgian justice system was revamped with the introduction of the 'e-justice' system. Although, implementation of technology is never easy, the Belgian justice system faced its own dilemmas as the e-justice system was divided into island projects and the systems became disjointed owing to a lack of proper planning and a lack of support from courts and beneficiaries. These island projects separated from the parent e-justice system, which interfered with the uniformity of the system. In 2007, the Ministry of Justice pulled the plug on the e-justice project, condemning the systems for its complex technicalities that inevitably caved the system inwards (Martínez & Abat, 2009; Rosa et al, 2013: 245).

Each technological system faces its own quandaries, with both positive attributes and negative effects. The intent and purpose of the e-justice system was to encapsulate the synergy of both criminal and civil proceedings into a single system permitting a resilient system. During the preliminary stages of automated systems, negative effects began to surface, in which three major challenges emerged and were confronted, namely:

1. The implementation of the e-justice system altered traditionalistic methods of court processes;
2. The use of information systems had been adopted in practice but not into law, thus, rendering it ineffective; and
3. The reduction in engagement and interaction between stakeholders and judicial bodies removed the human element from the court process.

The last-mentioned displays courts emulating a factory of mass-produced, rapidly generated case law, as the acquisition of technology within the workforce replaces the human aspect of law and of justice. As pointed out with the integration of technology in American systems, often automated systems in the legal milieu have removed the 'human element' from legal processes. In order to minimise a complete takeover by automated systems, Reiling (2009) has outlined that the EU has earmarked a four-stage process which reintegrates engagement between courts and consumers:

Stage 1: Information is made accessible to the public, posted on online domains in relation to public services;

Stage 2: Accommodating the needs of users by having what is known as one-way and two-way interactions; a one-way interaction entails downloading of documents and required paperwork, whereas a two-way interaction entails engagement with the court online services such as e-filing;

Stage 3: Organisation and processing of data input from e-filing; and

Stage 4: Delivery of paperwork to the corresponding party and any transfers of payments.

Again, the functionality of stages one to four of the e-CODEX system are for those consumers who have access to the internet and computers. It does not factor in persons who are unable to access court documentation owing to a lack of electronic equipment. It would be far-fetched and fallacious to assert that in today's modern era that *each and every person* has access to electronic equipment (author's emphasis). Is it therefore unjust and shocking that the e-CODEX system is still warranted as a desired system by the European consumers.

In summary, despite all the technological advancements, there are various shortcomings in implementing ICT in the justice system, attributed to rising costs, complexities of evolving technologies, inadequate training or experience and the rapid growth and ever changing ICT landscape − often seen as deterrents to the use these technologies. Although the systems exist and are in place, the attitude of officials, consumers and beneficiaries towards the system is of utmost importance to its longevity and effectiveness within the workplace (Velicogna, 2007). Whilst Namibia has taken inspiration from the e-justice systems in Europe, only time will tell if Namibian courts have been able to avoid the mistakes and negative effects faced by European courts.

3.3 E-policing in Namibia

It is important to note the continuing developments and trends in the field are not confined to first world countries but also are taking place in developing countries like Namibia and South Africa, which have similar judicial models and frameworks. A developing country with similar geopolitics to South Africa, Namibia, stands as an ideal comparative study. The South African approach will be examined in Chapter Two. Thus far, the research study has expounded on the North American and Eurocentric models of electronic justice systems; however an Afrocentric approach

to automated justice systems settings are yet to be made. Until the establishment of an Afrocentric system, countries such as Namibia have shifted practice from the paper-based docket paradigm (see Figure 2 below) to the incorporation of ICT projects within its justice systems. With guidance from the array of piloted projects in the northern hemisphere, Namibia has adapted its own framework of integrating ICT at the initial stages of the CJS in the policing network through e-policing. E-policing has been the point of departure for the implementation of ICT within the Namibian (and Nigerian) justice systems, and includes the use of smartphones, computers and data systems which create a network of information sharing amongst stakeholders.

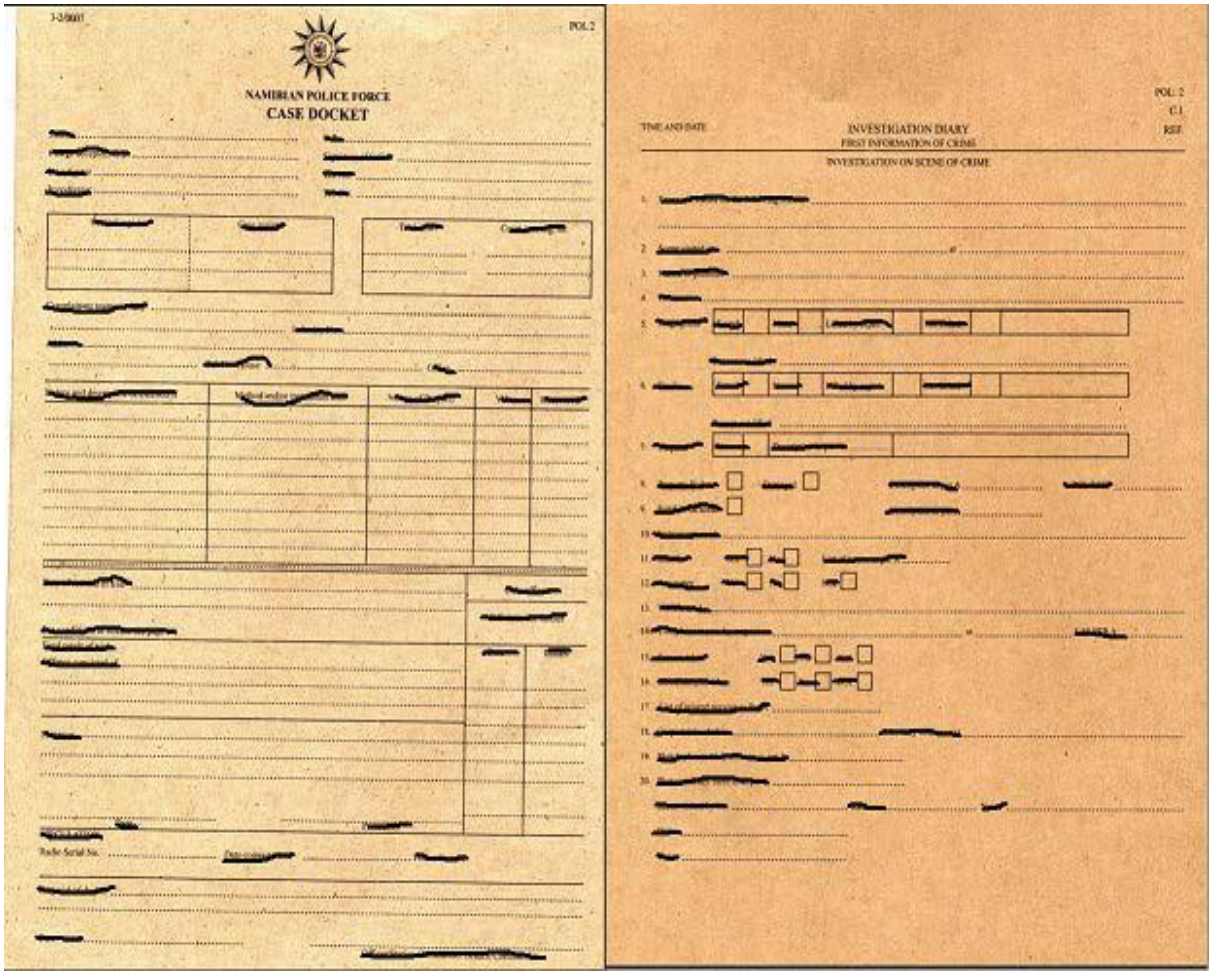


Figure 2: Sample of a Namibian case docket. (Source: Jensen, Iipito, Hedvig et al, 2012: 197)

As with the ICT-based American and European systems within the courts for case management, technology has similarly equipped Namibian police and the public with the tools necessary for information dissemination. Despite the introduction of

technology within the policing sector, the move away from paper-based communications such as police dockets has not been fully replaced by an e-Docket system. Today, however, smartphones are used to capture and report crimes and accidents which form part of the criminal database. Moreover, the noted merits of technology in policing systems has led to the reduction in loss of dockets, data editing capabilities and accuracy of information being disseminated, accessibility and easy retrieval of data and dockets and finally, the elimination of docket destruction (Jensen, Iipito, Hedvig et al, 2012: 196). The problem with drawing from the diverse wealth of information from the West means that adapting an ICT system to fit the needs and fiscal capabilities of the country is harder to implement. In addition to the fiscal powers, specialised skills are needed to control and oversee these distinct tools, and thus the human element cannot be removed from the larger picture. Is it really feasible to implement ICT projects in African justice systems or should funds be earmarked for skills development?

CONCLUSION

Technologizing the administration of court documents provides significant support and exponential case benefits by optimising resources and increasing data integrity and reliability which are crucial to the justice system. However, there must be a symbiotic relationship between advancing technology, the changing landscape of the justice system and the competence of human resources for the system to function effectively. Whilst court staff should embrace technological advancements, many staff within the judiciary have turned their backs against the use of technology. Restructuring of the business organisation has made staff to revert to old practices and traditions with which they are familiar. It can be summed up that the resistance to change of CFM by stakeholders and officials has been justified by five attributing factors namely:

1. Trepidation arising from the unforeseeable issues which may arise in the future;
2. A perceived loss of inherent power usually vested in officials which will be conferred to electronic systems;
3. The fear of incompetence – having to work with new systems strays from the traditional methods normally employed;

4. Dehumanisation of systems meaning that documents no longer act as socialising agents between people (Prior, 2008); and
5. A lack of engagement and participation in the planning processes may stifle progress.[14]

In striving for anti-corruption strategies for transparent and accountable governance, several governments have enlisted the help of five techniques which assist in case flow management ie case screening or docket control, judicial intervention, attorney and advocate support, specialisation of courts and integration of ICT (Kelso, 1998). Prior to automated systems, vast numbers of ring-binder folders had to be sifted through in order to retrieve the required information and for statistical data to be harvested (Slowes, 2012).

The use of technology in courts has marginalised the accessibility for the poor as they do not have access to technology to use systems such as PACER and AACER. The ability to walk into courts and access documents is a far greater option for those individuals lacking the necessary infrastructure and equipment to access the internet. Equality and fairness are tested by automated systems. How then can African countries, primarily South Africa and Namibia, draw on principles from the West if its citizens cannot access justice? This raises the wider question: Is access to justice for everyone?

The e-Docket system which equates to the e-justice or PACER systems, aims at heightening the progress of case flow and dealing with South African docket issues. The benefit of automating court documents in South Africa cannot be overlooked; conversely, will officials be positively receptive and subscribe to an automated system? The answer to this question is a crucial aspect of the implementation and effectiveness of an automated docketing system's failure or success. The South African perspective on case management systems, the history, developments, and debates will be discussed in the next chapter.

[14] Case Flow Management Guide of Michigan Trial Courts: Reporting Forms and Instructions for District Court. Lansing, MI: State Court Administrative Office. (2003)(p.1-67). Available at: *http://www.justiceforum.co.za/caseflow_man_USA.pdf* (Accessed 07-09-2017) Extracted from Mahoney, B. et al, 'Planning and Conducting a Workshop on Reducing Delay in Felony Cases' *Institute for Court Management of the National Center for State Courts* (1991)

Chapter Two:

The Administration and Governance of Case Dockets from a South African perspective

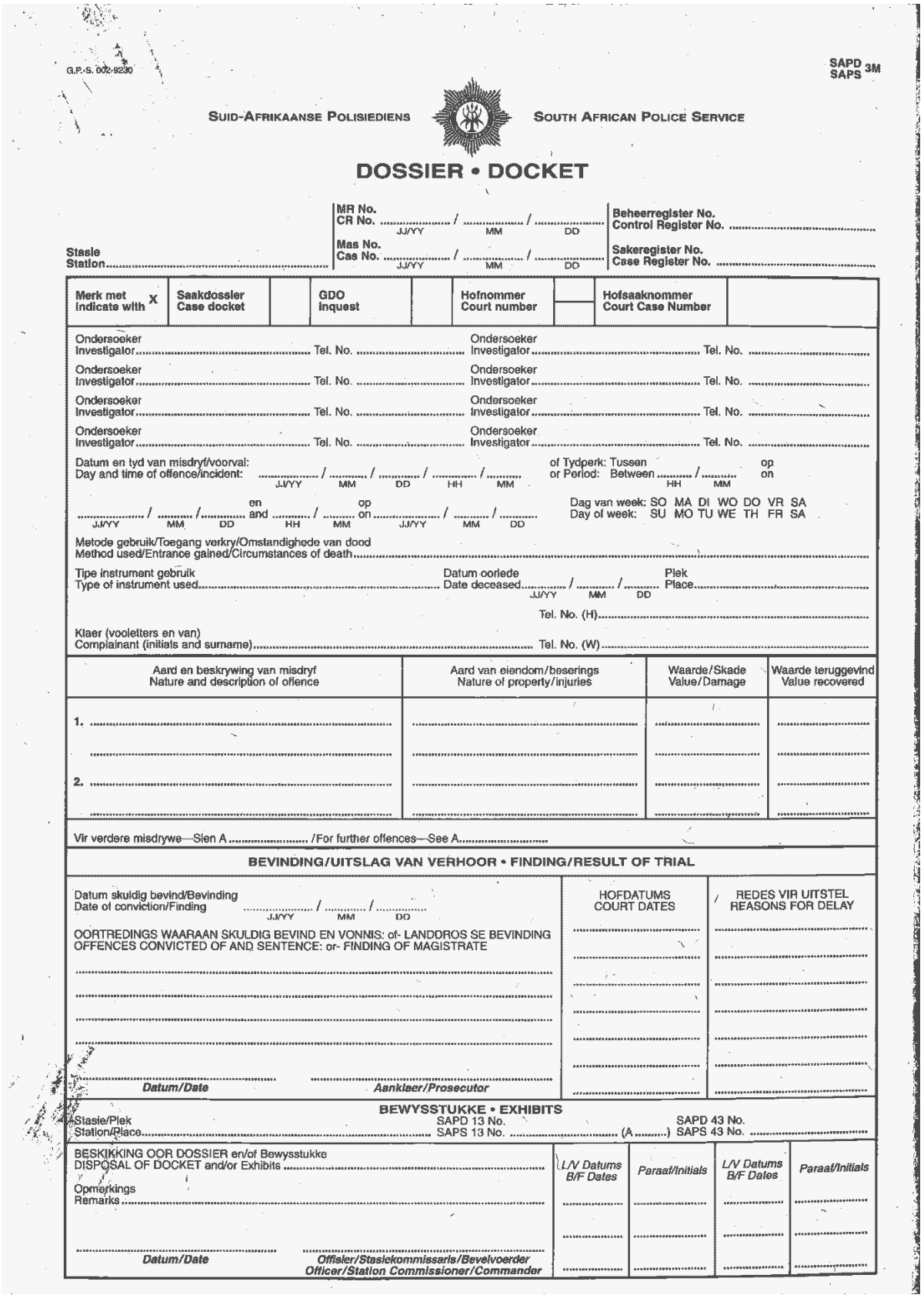
In Chapter One the international perspectives and best practices were discussed – the adoption of Integrated Justice Systems (IJS) and the employment of Information and Communications Technology (ICT) throughout courts in Europe, America and Namibia. These practices have highlighted both the improvements and downsides to employing some of the five techniques ie ICT projects (*supra*) and the proliferation of issues emanating from docket control.

Chapter Two turns to a consideration of the South African perspective – this chapter will illustrate the history of the case docket system which has transitioned from the apartheid regime to the democratic dispensation by which dockets have transformed into an instrument for exercising of rights. The dawn of the constitutional era has created the need for the government to radically transform the public sector into business-oriented organisations which expedite the delivery of services. Thus, the role of public administration principles and practices emanating from the private sector such as New Public Management and outsourcing, which have been adopted into the CJS, will be examined. Furthermore, this chapter will elaborate on the challenges relating to backlogs and hurdles faced by the lower and district courts. In response to these challenges, the Department of Justice and Constitutional Development has drawn from global practices in order to establish a national framework for CFM called the Practical Guide for Court and Case Flow Management for Regional and District Criminal Courts in the South African Lower Court Division. This framework will be analysed in the chapter further on.

1. INTRODUCTION

The South African case docket and justice system has been shaped by the country's eventful political history, primarily the perditious epoch of apartheid. The profound injustices emanating from a highly politicised and unequal society has required much redemption and relinquishing of past practices. The spectrum of injustices during this era ranged from police brutality to the state's refusal to furnish accused persons with dockets as well as the exploitation and violation of fundamental human rights. Key features of the South African criminal justice system in a fragmented society mimicked oppressive colonial police practices, brutality, an ignorance of human rights, marginalisation, corruption, political power play and the concentration of governmental power vested in a sovereign state.

What had brought about changes in the CJS had been twofold: first to recuperate from the injustices of a sovereign state and secondly to avoid the repetition of key features from apartheid practices. The researcher opines that the South African case docket is not simply a dossier which contains information pertaining to a criminal case. Rather, it is a complex artefact capturing South Africa's policing history and the injustices and despotism of apartheid, which delineates the backbone of South Africa's CJS. (An example of a South African case docket is depicted in Figure 3 below.) However, case docket management and other significant 'bureaucratic procedures' (Moeain, 2015: 17) had not been prioritised by the SAP under the apartheid regime. The South African Police (SAP) established in 1913 was the predecessor to the current South African Police Services (SAPS). The former had faced a dilemma in relaying and disseminating dockets from one institutional actor to the next – resulting in numerous injustices for victims and accused persons. Thus from 1994 onwards, the South African Police Service Act 68 of 1995, underpinned by constitutional principles, has been the guiding influence. Constitutionalism has orchestrated the transition from colonial practices to the constitutional dispensation; however, regardless of the evolution, some key features of the apartheid CJS are still reminiscent today. The following section explores the history of the South African docket as well as the significance of radical docket transformation in the democratic era.



G.P.-S. 002-9230

SAPD 3M
SAPS

SUID-AFRIKAANSE POLISIEDIENS — SOUTH AFRICAN POLICE SERVICE

DOSSIER • DOCKET

MR No.
CR No. ..... / ..... / ..... (JJ/YY / MM / DD)

Beheerregister No.
Control Register No. .....

Stasie
Station .....

Mas No.
Cas No. ..... / ..... / ..... (JJ/YY / MM / DD)

Sakeregister No.
Case Register No. .....

Merk met X / Indicate with X	Saakdossier / Case docket		GDO / Inquest		Hofnommer / Court number		Hofsaaknommer / Court Case Number	

Ondersoeker / Investigator ..... Tel. No. .....
Ondersoeker / Investigator ..... Tel. No. .....
Ondersoeker / Investigator ..... Tel. No. .....
Ondersoeker / Investigator ..... Tel. No. .....
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Ondersoeker / Investigator ..... Tel. No. .....

Datum en tyd van misdryf/voorval:
Day and time of offence/incident: ..... / ..... / ..... / ..... / ..... (JJ/YY / MM / DD / HH / MM)
of Tydperk: Tussen ..... / ..... op
or Period: Between ..... / ..... on (HH / MM)

..... / ..... / ..... en ..... / ..... op ..... / ..... / ..... (JJ/YY / MM / DD en HH / MM op JJ/YY / MM / DD)
Dag van week: SO MA DI WO DO VR SA
Day of week: SU MO TU WE TH FR SA

Metode gebruik/Toegang verkry/Omstandighede van dood
Method used/Entrance gained/Circumstances of death .....

Tipe instrument gebruik
Type of instrument used ..... Datum oorlede
Date deceased ..... / ..... / ..... (JJ/YY / MM / DD) Plek
Place .....

Tel. No. (H) .....

Klaer (voorletters en van)
Complainant (initials and surname) ..... Tel. No. (W) .....

Aard en beskrywing van misdryf / Nature and description of offence	Aard van eiendom/beserings / Nature of property/injuries	Waarde/Skade / Value/Damage	Waarde teruggevind / Value recovered
1.	.....	.....	.....
.....	.....	.....	.....
2.	.....	.....	.....
.....	.....	.....	.....

Vir verdere misdrywe—Sien A ....., /For further offences—See A .....

BEVINDING/UITSLAG VAN VERHOOR • FINDING/RESULT OF TRIAL

Datum skuldig bevind/Bevinding
Date of conviction/Finding ..... / ..... / ..... (JJ/YY / MM / DD)

OORTREDINGS WAARAAN SKULDIG BEVIND EN VONNIS: of- LANDDROS SE BEVINDING
OFFENCES CONVICTED OF AND SENTENCE: or- FINDING OF MAGISTRATE

HOFDATUMS / COURT DATES

REDES VIR UITSTEL / REASONS FOR DELAY

Datum/Date — *Aanklaer/Prosecutor*

BEWYSSTUKKE • EXHIBITS

Stasie/Plek
Station/Place .....
SAPD 13 No.
SAPS 13 No. ..... (A .....)
SAPD 43 No.
SAPS 43 No. .....

BESKIKKING OOR DOSSIER en/of Bewysstukke
DISPOSAL OF DOCKET and/or Exhibits .....

Opmerkings
Remarks .....

L/V Datums B/F Dates	*Paraaf/Initials*	*L/V Datums B/F Dates*	*Paraaf/Initials*
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Datum/Date — *Offisier/Stasiekommissaris/Bevelvoerder / Officer/Station Commissioner/Commander*

Figure 3: The face of a South African case docket. (Source: Moeain, 2015: 73)

2 CASE DOCKETS: THE LIFEBLOOD OF CRIMINAL LITIGATION

The South African Case Docket Analysis Learner Manual describes a docket as ‘an official document in which a record is kept of a reported crime and the investigation conducted into such a crime’ (SAPS, 2002). Dockets may vary in nature as case dockets are used in both civil and criminal litigation − in American jurisdictions a docket may imply a summation of proceedings to a civil dispute. Thus online portals have been made available for consumers to keep track of case chronology and case developments. Similar to many other jurisdictions however, in South African criminal litigation a docket refers to the document opened on behalf of an affected or interested party by a police official, where an allegation of a crime or offence has been made against a transgressor. Van Veenendal, (2001) posits that the wheels of the CJS begin to turn once a criminal offence has been committed, as such conduct provokes the opening of a case docket which is the point of entry to criminal litigation. As a paper-based dossier, often the significance and importance of a docket is forgotten − case dockets are fundamental to the CJS ‘pipeline’ as they are regarded as a critically important component which marks both the point of departure and the lifeblood of criminal litigation. The researcher ascribes the term ‘pipeline’ owing to the CJS emulating a multidimensional organisation with a number of institutional actors, each playing a role in funnelling an accused person out of the pipeline through various avenues and channels of mediation and reconciliation. It is of great importance to understand the procedural and logistical pipeline behind the South African case docket system as great strides have been taken to shift away from apartheid practices.

An absence of adequate docket management during the apartheid regime had laid the ground for inadequate docket regulation to go unnoticed. However, by prioritising salient aspects such as fair trial rights, access to information, meeting the demands of the public and upholding the ethos of the Constitution, case docket management and administration have become the hiatus to the apartheid continuum. Case dockets in the democratic era have further transitioned and evolved the South African CJS into new paradigms, encompassing transformative and open justice brimming with human rights enshrined by the Constitution. Therefore, it should be reiterated that a docket should not solely be perceived as a kneejerk reaction to crime, but rather an instrument which affirms the abundance of human rights. Prior

to the enactment of human rights treaties and legislation, (and most commonly seen during the apartheid era) the denial of retrieval access to dockets by detainees and arrestees infringed fair trial rights. Section 23 of the interim Constitution of the Republic of South Africa, Act 200 of 1993 outlined the access to information clause: '[E]very person shall have the right of access to all information held by the state or any of its organs at any level of government in so far as such information is required for the exercise or protection of any of his or her rights.' Under the apartheid regime information contained in case dockets was considered 'common law privilege' (Hollamby, 1994) and it was therefore permissible for information to be withheld by state actors ie the police and public prosecutors. Such omission by prosecutors had a debilitating effect on the defence in accessing state-held information, which denied accused persons the net of protection afforded by inherent human rights. Fundamentally, without sight of a docket an accused cannot challenge the evidence contained within the docket. It is therefore imperative that the information contained in a docket be disseminated to the respective interested parties for the protection and exercise of certain rights.

In *R v Steyn*[15] the act of depriving the defence and or the accused of information contained in the docket coined the term 'blanket docket privilege'. It must be borne in mind that the 'deprivation' of privileged information is within the ambit of the law and thus not an infringement on the rights afforded to the accused. In the attempt to distinguish privileged and unprivileged information the Constitutional Court declared in *Shabalala and others v Attorney-General of Transvaal and another*[16] that blanket docket privilege claimed by state witnesses was no longer available to the prosecution (Schwikkard & Van der Merwe, 2009). Rather information held within the docket could be used to jog the memory of the defence. The decision to disseminate 'privileged and unprivileged docket information' (Hollamby, 1994) vests in a government official, whilst the final decision is made by the courts. (Hollamby, 1994) It is opined that blanket docket privilege is a prime example of the exertion of state power by the executive, as it bears similarities to docket screening wherein the vetting process is performed by a government official. The ramifications of case screening by the executive have been discussed in

[15] 1954 (1) SA 324 (A)
[16] 1996 (1) SA 725 (CC)

Chapter One – it alludes to utilising judicial powers to further and propagate politicised and private agendas.

Thus far this research study has personified dockets as powerful tools with the ability to protect and perform multiple functions. It can be said, however, that although dockets are not endowed with agency as humans are, the timeline of South African case dockets has illustrated the shift in thinking of institutional actors. This shift represents the change in laws, practices and docket culture. By docket culture the researcher makes reference to the manner in which dockets are controlled, the qualitative value of dockets and the institutional actors' mind-set towards the dockets. Moeain (2015) has demonstrated the mind-set of institutional actors in his research paper titled: Revealing the Janus Face of Literacy: Text Production and the Creation of Trans-contextual Stability in South Africa's Criminal Justice System. The study asserts that case dockets have been personified as 'brown donkeys' by police officials, given the colour and sluggishness of case dockets as they move from police station to the courts. Furthermore, senior lecturer of Social Anthropology at the University of Witwatersrand, Dr Julia Hornberger, alludes to how pressure felt by police officials has created a cynical mind-set towards dockets. This pressure is due to the exorbitant number of case dockets which require completion. As Hornberger (2004) pronounces, the primary objective of the police practice shifts from combating crime to closing dockets, a concept termed 'docket culture'. Dockets which require further investigation are often closed in order to reduce the number of mounting case files. Although docket culture may become problematic as police are left to complete clerical tasks as opposed to fighting crime, docket administration and management are fundamental aspects of ensuring administrative reform.

The old practices governing the administration of case dockets echo the stifling policing practices of the SAP. In order to purge the SAP policing practices which may remain, state institutions such as the SAPS and the National Prosecuting Authority (NPA) have inculcated democratic principles of open and transparent government both in and out of the courts. This assists in creating a transparent system in which the dissemination of information held by the state (one of the quintessential elements for open justice) is accessible and enables the protection and exercise of rights.The next section will address administrative reform and

transparency of courts in the democratic era as well as the shift in policing practices from an essential service to an organised business structure.

3 A SOUTH AFRICAN APPROACH TO CASE MANAGEMENT SYSTEMS AND THE ROLE OF PUBLIC MANAGEMENT CONCEPTS IN ADMINISTRATIVE REFORM

Constitutionalism has dissolved the concentration of governmental power from being vested into a single arm of government by mitigating the powers of the executive by creating a division of functions of the three branches of government ie the judiciary, legislature and executive. Principles of cooperative government and intergovernmental relations outlined in section 41(c) of the Constitution posit that principles of cooperative government encompass the provision of 'effective, transparent, accountable and coherent government for the Republic as a whole'.[17] In order to avoid apartheid practices from cascading into new policing principles and ordinances within the democratic era, the principles of transparency, accountability and open government have come to guide public administration. In order to enhance the delivery of public services and public administration, principles of New Public Management (NPM) have been utilised to drive forth goal-orientated and output driven institutions for the benefit of the consumer. The sluggishness of the public sector is thought to reap benefits from the hype of NPM. However, the adoption of consumer-centric ideologies in a public service sector may not have the same ramifications as in the private sector. What will be explored in this segment is the administrative reform within the CJS to expedite service delivery, the institutional actors delegated to contribute to the administrative process and the systems and practices put in place to achieve successful docket management and administration.

In order to disperse governmental power and utilise limited resources the paradigm of New Public Management (NPM) has come to wield persuasive influence over the public sector. The rationale behind the influence of NPM philosophies is to create a governmental institution which is goal and output driven (Carstens & Thornhill, 2000) in order to catalyse the transition of new administrative reform in South Africa. NPM can be understood as public institutions utilising practices and traditions from private and corporate entities to accelerate public administration and effectively control public management and services

[17] Constitution of the Republic of South Africa, 1996

(Naidoo, 2015). A combination of factors has led to the hype about NPM within the public sector, primarily the CJS, because NPM it said to bring about administrative reform and a reorganisation of government functions (Carstens & Thornhill, 2000). The emergence of NPM demonstrates the desperation of the CJS in inculcating new strategies to establish transformational governance in South Africa. A transformative government implies the adaption of government agencies and institutions to social developments (Bannister & Connolly, 2010). After the transition from the apartheid era, it can be determined that administrative reform and reorganisation of government encompasses a shift in work ethic of governmental functions and transactions with and without non-state bodies.

Governance structures have been altered to adapt to the new democratic climate that underpins policy frameworks and organisational practices. In relation to the CJS, this implies a shift in work dynamic and the manner in which the administrative functions of the CJS are processed. At the administrative forefront of the CJS, docket management and administration under NPM principles would imply not only a paradigm shift in the method of administration but also a shift from traditional practices by institutional actors. The shift from public practice to private has enabled several governmental institutions to assign tasks and powers to private bodies in order to streamline performance and output to satisfy the needs of consumers. The whole business structure of CJS changes under NPM as institutional actors are expected to adapt to business practices reeled in from the private sector. This change may not be embraced by institutional actors within the CJS as the mandates of corporate entities and the public sector vary exponentially. The private sector comprises high-energy, rapidly generated work to serve the wants and needs of consumers. In stark contrast, the CJS which falls under the public sector, progressively realises service delivery to cater to the needs and demands brought by the public.

The role of public services underpinned by NPM has attempted to establish these accountable and consumer-centric organisations and ‘neo-liberal governments’ have attempted create similar referents between private sectors and the public sector. This model has been established by the West (in particular Anglo-American countries) in order to establish a ‘lean and smart policing organisation’ (Manning, K. Peter 2008). The delegation of governmental power to private entities is not only

driven by democratic philosophy, but is also a manifestation of administrative reform within the democratic dispensation. NPM within the CJS in theory is thought to disperse this governmental power into sub-branches of the private sector which rids governmental power from being vested in governmental spheres ie the public sector. The founding principle of the private sector is consumer-orientated, as opposed to the public sector which is premised on the needs of citizens, and there is a fine line that separates these two sectors – profit. A weakness of the adoption of NPM within governmental institutes such as courts implies that litigants ought to be treated as consumers of the institute and a conveyor belt like fashion would be adopted – one in, one out. In relation to the functions of the court to interpret and develop the law, would this concept of rapidly generated case law not impact the lives of the litigants? The effects of this on the courts would be that precedents would be generated at a steady rate but without any merit.

The South African courts have been among of the many public institutions that have drawn from the principles of the private sector. Over the years, the large increment of cases arriving at courts has called for more drastic measures to be taken for courts to oversee cases timeously. Given the limited resources, institutional actors of the CJS were urged to 'make-do' with available resources (Schönteich, 2004). Managerialism principles of NPM have edged into the courts system as the creation of new positions to fulfil clerical tasks is thought to abet courts in administrative functions that, if performed by intuitional actors, would normally consume valuable court hours. The power dynamic behind managerialism and its inherent power mean that it is driven by leadership or an empowered individual. The ripple effect of this inherent power may come as a contradiction to the dispersion of governmental power. Naidoo (2015) alludes to the 'matrix' of State capture as one of the pitfalls of NPM within the South African context. It is of utmost importance that governmental institutes do not fall prey to puppeteering from these powerhouses.

In its bid to provide cost-effective services, the government has turned to one of the mechanisms which might facilitate the expediting of governmental tasks – outsourcing. Outsourcing can be ascribed as an entity which employs the services of a contracting third-party for the performance of the entity's functions.[18] The tendency to outsource governmental administrative work to private corporations is

[18] Definition of 'Outsourcing' .Investopedia. Available at: *https://www.investopedia.com/terms/o/outsourcing.asp* (Accessed 18-11-2017)

not a recent venture. As seen with the American system, PACER, the expenses associated with having automated systems may lead the government to be reliant on private entities to bail itself out as in the case of Bloomberg and AACER with the PACER system. Outsourcing areas within the CJS may help relieve government expenditure as approximately one-tenth of South Africa's expenditure is spent on financing the CJS and prosecutorial services (Schönteich, 2004). By having third-party contractors performing functions on behalf of the state, outsourcing minimises the expenditure of government as third-party contracts would be responsible for procurement, labour and production costs.[19] Outsourcing of governmental duties to private corporate bodies and oversight boards such as ombudsmen bolsters accountability and transparency of governmental duties as third parties assist government entities to function at their optimal best for the public interest (Schwartz 2002; Pollitt 2003; Naidoo, 2015). However, this notion may be inverted by governments not taking accountability for the lack of performance from third party contracts or government institutions. Outsourcing is said to facilitate the divergence of state power and spreads it across multi-faceted organisations and enterprises. Public Private Partnership or PPP is the term used to describe the contractual agreements entered into between the South African Government and private entities in which the latter conduct state functions such as service delivery. Outsourcing governmental functions to private bodies has merit, as private entities can provide high-calibre, swift services at an economical cost, thus not exacerbating an already strained state budget. However, like all business ventures outsourcing governmental functions to private entities comes with risks and dangers. Some of the dangers associated with outsourcing include: financial costs to government, a lack of IT and various specialised skills, expediting service delivery, access to classified and sensitive government information and political bias and conflict of interest with tenders.[20] In addition to the dangers, the disadvantage of customer dissatisfaction with the CJS means that individuals may incur costs by having to seek assistance from external actors from the CJS such as private investigation or private prosecution. Many areas of the CJS have been privatised, such as prosecutorial and

[19] Ibid.

[20] Chen, Yu-Che & Gant, Jon. 'Transforming local e-government services: the use of application service.' *Government Information Quarterly* 18 (2001) 343–355. Available at: *providershttp://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.452.1486&rep=rep1&type=pdf* (Accessed 18-11-2017)

policing and security services. The SAPS are often so swamped with completed case dockets that private investigators, funded by state resources, provide to police officials, which are then readily handed over to the prosecution. Moreover victims hire private investigators in order to finalise matters more rapidly; however, more often than not, these dockets are obtained in a clandestine fashion (Minnaar, 2005). The advantage of outsourcing is that power and governmental functions are not centrally concentrated but rather distributed amongst various private and public role players. This allows government institutions to fulfil their primary functions and focus on their constitutional mandates without their functions proliferating and branching out into grey areas.

> Outsource it to an administration company where a private company can do all the opening of dockets, closing of dockets, whatever – let the policeman get back on the road and do what he's good at. So he's not chained to paperwork. (Sudheim, 2015:7)

South Africa has begun to draw from the wealth of experience of countries such as Australia, Canada, New Zealand, the UK and the United States, in which the mandate of police forces/services has morphed into the responsibility of corporate entities. The administration and management of legal documents are of utmost importance in ensuring accountability within the legal milieu, primarily case dockets which are indispensable for the existence of the CJS. Although it is true that the primary function of the police is crime prevention, the administrative tasks of the police cannot be taken for granted. If dockets were to be administered by an external entity, the current issues of governance and corruption would be no different. The sanctity of the information contained within the docket cannot be divulged to third parties, as often police work encompasses confidential and covert material. Manning, K. Peter (2008) pronounces that 'crime fighting has of course been converted into records management'. Ostensibly, the effectiveness of service delivery within the CJS is predicated on NPM − a shift from chasing criminals to chasing performance targets and measuring up to key performance indicators (KPIs). The lack of paperwork and administrative function within the police services are said to mask a lack of accountability (Van Maanen, 1983) as dockets represent and resonate 'responsible democratic governance' (Latour, 2005:46; Moeain, 2015: 88) within the public service sector. 'Responsible democratic governance' alludes to a well-organised government within the democratic sphere that, through its functions,

inculcates the principles of transparent, accountable and open governance. Furthermore, responsible democratic governance within the South African context would aid in upholding the moral resonance of constitutionalism which has championed the purging of the deep-rooted political history of South African CJS of the apartheid era.

Whilst NPM has changed administrative systems, at some point the disillusionment with NPM is bound to set in. Docket management portrays a fundamental function of the police services which cannot be performed by third party entities. Administrative reform should not be reliant on the employment of services and philosophies drawn from the private sector which cater to the needs of consumers. Administrative reform should embody the principles drawn from the constitution which underpins the functions of the various agencies within the CJS. The mandate of these institutions should not mirror consumer-centric policies, but should establish of a rapport between the public and the police, as during the apartheid era the relationship between the police and the public was contaminated by fear. The South African police is no longer the militaristic South African Police Force, but has transcended to the South African Police Services. The term 'service' is itself indicative of the nature of police work in South Africa – an essential service not a target-chasing entity. The docket is like a time capsule in which the CJS had transferred from the apartheid era to the democratic dispensation. The next section explores case chronology as well as the role institutional actors play in the administration of dockets.

3.1 Docket Management and Administration

3.1.1 Case Docket Chronology

This section intends to illustrate the evolutionary cycle of a case docket as a locomotive repository that is passed, handled and administered from one institutional actor to the next. The image below (Figure 4) narrates the logistics of case dockets in South Africa and the vast pipeline-like process a docket endures as it constantly moves in a network of institutional actors. Furthermore, this section will demonstrate what a case docket contains as well as the institutional actors responsible for its management and administration.

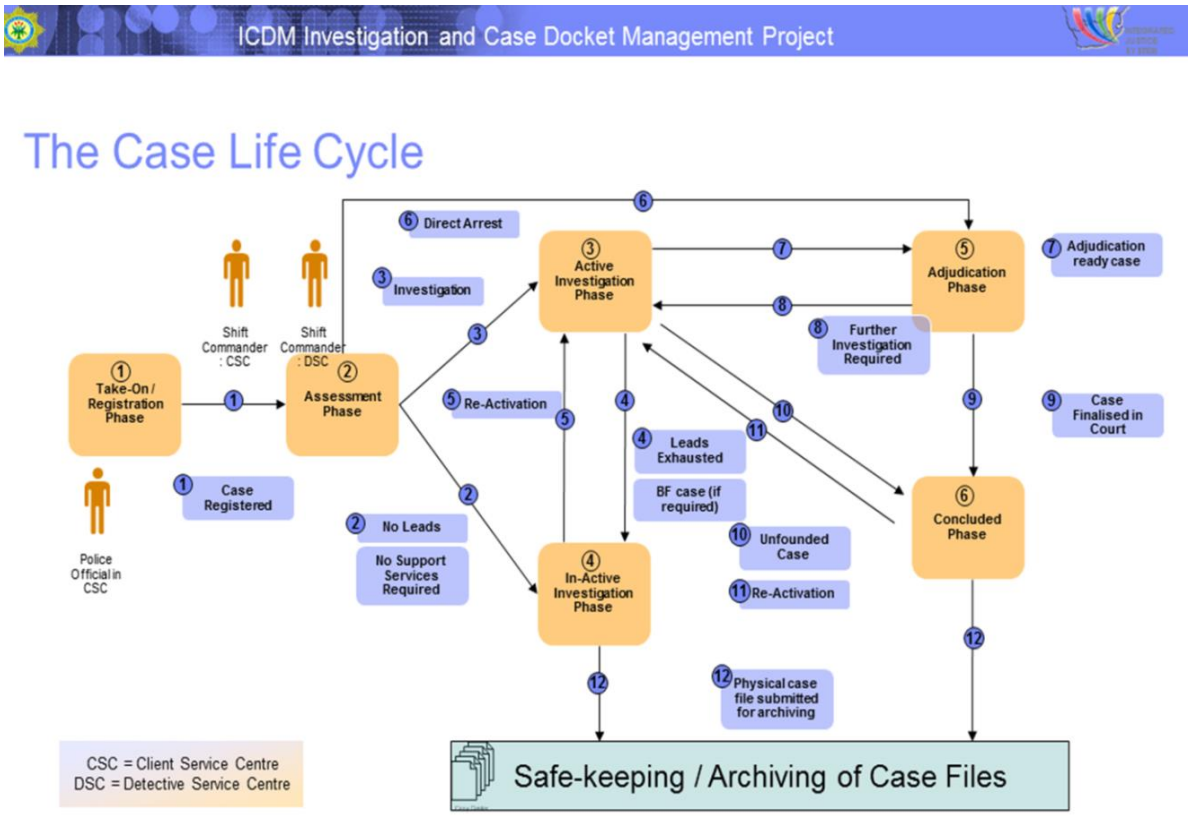


Figure 4: The Case Life Cycle (Source: South African Police Services, SAPS TMS - ICDM Project. Project Status April 2013. Power point presentation slide 7)

The chronology of a case docket is posited in *Criminal (in)justice in South Africa: A Civil Society Perspective*, (Cartwright & Shearing, 2009: 69) in which the authors outline to the nine-step process of an investigation in which the SAPS are responsible for stages 1 through to 8 as illustrated by Figure 4. Thereafter, once a docket has funnelled through police procedures, it is handed to the NPA where it is subject to scrutiny and decision making − stages 9 to 12. The following nine-step process outlines the process which a case docket follows:

- Step 1: The initiation of a case docket

Once an allegation has been made against an individual, a detective is mandated to open a case docket in response to a victim's claim or a crime that has been perpetrated and must be completed in the home language of the alleged accused, witness or complainant. A case docket, also known as 'SAPS 3M form' is opened once the First Information of a Crime (FIC) is documented in the Occurrence Book (OB) at a police station.[21] A detective will be designated as the institutional role

[21] *S v Mene and Another* (349/86) [1988] ZASCA 66; (1988) 2 All SA 482 (A) (27 May 1988)

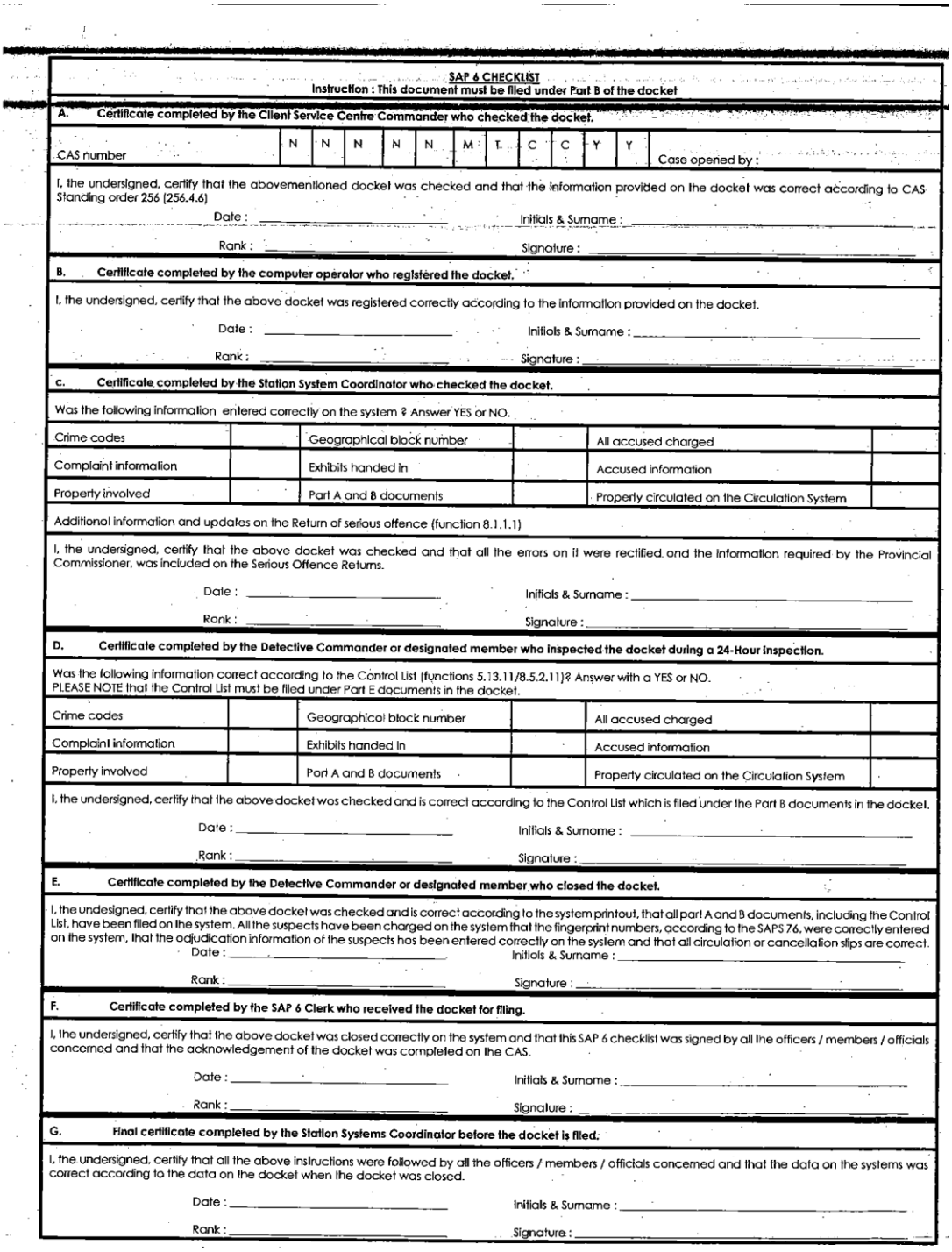
player responsible for the administration and management of the docket for the duration of the investigation.

- Step 2. Case docket registration

Once the docket has come into being, it must be registered in the police data base or crime register called the Crime Administration System or CAS. The location used to capture the data is called the Client Service Centre (CSC), formerly known as the Community Service Centre. The accused person or persons' particulars are then entered into the CAS by an official located at the CSC, or at times entered by the detective responsible for opening the docket (Standing Order (General) 321 Docket Management Case Docket (SAPS 3M)). Where the CAS system is offline, officers assign an OB number to the docket.

- Step 3: Transfer of case docket

Following the data entry made in the CSC it is imperative that the docket be transferred back to the investigating officer or unit detective in order to commence the inquiry process. In order to avoid the constant oscillation between police stations and the courts, a checklist titled 'SAP 6 Checklist' (see Figure 5 below) has been established to guide officers in submitting satisfactorily completed dockets to the various institutional actors (Moeain, 2015: 92).



SAP 6 CHECKLIST

Instruction : This document must be filed under Part B of the docket

A. Certificate completed by the Client Service Centre Commander who checked the docket.

CAS number | N | N | N | N | N | M | T | C | C | Y | Y | Case opened by :

I, the undersigned, certify that the abovementioned docket was checked and that the information provided on the docket was correct according to CAS Standing order 256 (256.4.6)

Date : _____ Initials & Surname : _____

Rank : _____ Signature : _____

B. Certificate completed by the computer operator who registered the docket.

I, the undersigned, certify that the above docket was registered correctly according to the information provided on the docket.

Date : _____ Initials & Surname : _____

Rank : _____ Signature : _____

C. Certificate completed by the Station System Coordinator who checked the docket.

Was the following information entered correctly on the system ? Answer YES or NO.

Crime codes		Geographical block number		All accused charged	
Complaint information		Exhibits handed in		Accused information	
Property involved		Part A and B documents		Properly circulated on the Circulation System	

Additional information and updates on the Return of serious offence (function 8.1.1.1)

I, the undersigned, certify that the above docket was checked and that all the errors on it were rectified and the information required by the Provincial Commissioner, was included on the Serious Offence Returns.

Date : _____ Initials & Surname : _____

Rank : _____ Signature : _____

D. Certificate completed by the Detective Commander or designated member who inspected the docket during a 24-Hour inspection.

Was the following information correct according to the Control List (functions 5.13.11/8.5.2.11)? Answer with a YES or NO.
PLEASE NOTE that the Control List must be filed under Part E documents in the docket.

Crime codes		Geographical block number		All accused charged	
Complaint information		Exhibits handed in		Accused information	
Property involved		Part A and B documents		Properly circulated on the Circulation System	

I, the undersigned, certify that the above docket was checked and is correct according to the Control List which is filed under the Part B documents in the docket.

Date : _____ Initials & Surname : _____

Rank : _____ Signature : _____

E. Certificate completed by the Detective Commander or designated member who closed the docket.

I, the undesigned, certify that the above docket was checked and is correct according to the system printout, that all part A and B documents, including the Control List, have been filed on the system. All the suspects have been charged on the system that the fingerprint numbers, according to the SAPS 76, were correctly entered on the system, that the adjudication information of the suspects has been entered correctly on the system and that all circulation or cancellation slips are correct.

Date : _____ Initials & Surname : _____

Rank : _____ Signature : _____

F. Certificate completed by the SAP 6 Clerk who received the docket for filing.

I, the undersigned, certify that the above docket was closed correctly on the system and that this SAP 6 checklist was signed by all the officers / members / officials concerned and that the acknowledgement of the docket was completed on the CAS.

Date : _____ Initials & Surname : _____

Rank : _____ Signature : _____

G. Final certificate completed by the Station Systems Coordinator before the docket is filed.

I, the undersigned, certify that all the above instructions were followed by all the officers / members / officials concerned and that the data on the systems was correct according to the data on the docket when the docket was closed.

Date : _____ Initials & Surname : _____

Rank : _____ Signature : _____

Figure 5: SAPS checklist for docket management (Source: Moeain, 2015:92)

- Step 4: First information inspection

Upon obtaining receipt of the case docket, either the detective or crime office commander must acknowledge and sign for its receipt for auditing purposes by which the detective binds the corresponding officer to be liable and accountable for the signed docket.

- Step 5: Allocation of dockets to detectives

It is the prerogative of the detective commander to assign and allocate dockets to detectives, who will bear responsibility for the investigation process as well as the management of the dockets assigned to them.[22]

- Step 6: Commencement of the investigation

The detective assigned a case docket must consult with the Criminal Records Centre (CRC) to establish whether or not the arrestee/ alleged accused person/s has any prior convictions or any further information that may assist the prosecutor in building his or her case.

- Step 7: 24-hour docket inspection

Once the investigation process has commenced a scheduled 24-hour docket inspection takes place; this inspection may occur once a month or half-annually.

- Step 8: Dockets are sent to court

A docket checklist is used to enable detectives to meticulously keep a record of the information contained within the docket and serves as a guideline which outlines the information that should and can be collected. Once a docket has been referenced against the docket checklist and is considered completed, it is transferred to the senior prosecutor, who will determine if a *prima facie* case has been established against the alleged accused individual(s), as a charge is predicated on the evidence contained within the docket, compiled by the detective. Once the senior prosecutor is satisfied that a charge or charges can be maintained against the alleged accused person(s), the matter is placed on the court roll and the criminal case proceeds. Should the prosecutor be of the opinion that there is an insufficient amount of evidence in the docket, the docket will be sent back to the detective for further investigation.

- Step 9: Further investigations and feedback

During the preliminary stages of the criminal case, the SAPS, namely the detective assigned to a particular case, is responsible for keeping the victim or complainant abreast of the litigation as well as the status quo of his or her case. The detective in charge must inform the victim or complainant of the whereabouts of the docket as

[22] Extracted from the *South African Police Service, Skills Programme 1, Crime Investigation, Learner Guide*

well as the prosecutor's decision to go ahead with a prosecution or choose to have a stay of proceedings. Inherently, prosecutors are the gatekeepers to criminal law.

3.2 The National Prosecuting Authority

Section 179(2) of the Constitution provides that '[T]he prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.' As *dominus litis* or master of the case, all prosecutorial powers are vested in the public prosecutor, employed by the NPA, who regulates the point of entry into the CJS. Prosecutors are responsible for docket screening, in contrast to international jurisdictions where docket control is performed by a judicial officer. In contrast to other jurisdictions where prosecution is mandatory, South African public prosecutors are afforded an extremely wide inherent discretionary power. By scrutinising and sifting through the piles of dockets provided by the SAPS, the prosecutor must exercise discretion whether or not to prosecute based on the merit of the docket.

The decision to prosecute or not is outlined in section 6 of the Criminal Procedure Act 51 of 1977 (CPA) which alludes to the 'power to withdraw or stop prosecution'. If a public prosecutor declines to execute a prosecution against an alleged accused owing to either an absence of *prima facie* evidence in the docket or the exclusion of the individual from the CJS pipeline, the prosecutor must issue a *nolle prosequi* certificate in order to finalise proceedings (Matthews, 2009; Cartwright & Shearing, 2009). *Prima facie* evidence is one of the most fundamental aspects of criminal litigation as it is invariably a deciding factor in the discretion to prosecute. *Prima facie* evidence is characterised as rudimental, surface-value evidence in relation to conclusive evidence needed to satisfy the burden of proof in criminal proceedings beyond a reasonable doubt (Schwikkard & Van der Merwe, 2009: 20). The docket equips both police and prosecutors with essential documentary evidence and information needed for the criminal inquest. In *National Director of Public Prosecutions v King*[23] the Supreme Court of Appeal postulated that: the detective responsible for the docket apportions case dockets into three sections or 'Clips' A, B and C'. 'Clip A' pertains to all documentary evidence which includes: affidavits given by witnesses, complainants and police officers, expert testimonies, any issued warrants of arrest, documentary exhibits from crime scenes (sketches,

[23] *National Director of Public Prosecutions v King* (86/09) [2010] ZASCA 8 at para 1

photographs and fingerprint records) and forensic laboratory and pathology reports. 'Clip B' refers to communications and correspondence made during the investigation such as notes taken by the detectives and internal reports, dog reports from the K9 units, negative fingerprint records, newspaper clippings and replies to and from other police stations in relation to the case. 'Clip C' alludes to the SAPS investigation diary. The SAPS must provide sufficient evidence in the docket which allows the prosecutor to formulate a case where a *prima facie* case has been established based on the information contained solely in 'Clip A' without having to make reference to 'Clips B' and 'C', which are classified SAPS information. (Standing Order (General) 321 Docket Management – Checking of Case Dockets (SAPS 3M)). Essentially, without a docket a prosecutor's case is non-existent, in that, *inter alia*, prosecutors cannot lead witnesses in a trial in an adversarial system without a docket.

'No case, no enrolment' is one of the NPA's dogmas which necessitates that the prerequisites for cases to be enrolled on court rolls are largely dependent on the weight of the documentary evidence contained within the case docket. The documentary evidence must enable the prosecutor to draw logical and justified parallels between an alleged accused and the alleged crime or offence. Without *prima facie* evidence to draw these parallels, a charge sheet cannot be drawn, and the repercussion is that the case is not fit to be enrolled for trial. Thus, the docket must be sent back to the detective in charge of the docket for further investigation. Senior prosecutors performing the screening process must be cognisant of the evidentiary items missing from the docket which would enable a successful prosecution and must instruct the investigating officers accordingly. Once a case is deemed fit for trial, senior prosecutors must register the dockets in the NPA docket register for auditing and tracking. Furthermore, prosecutors must earmark and allot dockets in the court of appropriate jurisdiction viz District, Regional or High Court, or a specialised court (Commercial Crimes Court) depending on the offence or crime that is alleged. As aforementioned in Chapter One, specialisation of courts results in the celerity of cases as court staff are more knowledgeable on a particular subject which provides expertise to litigious matters. Once a matter has been set down for trial, the adherence to the execution of preparatory steps which facilitate an effective trial and the attempt at a successful prosecution and conviction are necessary. (Note that each matter placed on the roll must align with these time-consuming and tedious steps.)

The first step entails perusing dockets to ensure that no exhibits or documentary evidence are missing. The second involves docket screening and docket control, which enables the prosecutor to determine whether the docket is of substantial value in that *prima facie* evidence exists and that all evidence has been obtained constitutionally. The third is drafting the charge sheet or issuing a *nolle prosequi* certificate and consulting with the victim, complainant or the family thereof. If a *nolle prosequi* certificate is issued the prosecutor must provide the complainant or victim with the justifications for the stay of proceedings. The fourth step entails the application and interpretation of the law to the facts and evidence contained within the docket by researching the applicable and appropriate body of law. Additionally, the prosecutor must secure the attendance of the alleged accused at the trial by issuing a summons to the alleged accused or requesting a warrant of arrest if the accused is not already remanded in police custody. The fifth step involves preparing for trial – constructing a sound and logical proposition that is augmented and bolstered by concrete evidence ie physical evidence and exhibits; moreover the exhibits must be booked and readily available for trial hearings. The sixth step entails securing the attendance of state witnesses at trial as well as briefing witnesses prior to giving evidence. Finally, a prosecutor is responsible for formulating an appropriate, just and reasonable sentencing term for the accused in the event of a successful prosecution and conviction.

Section 50(1)(c) of the CPA provides that 'an accused has to appear in court no later than 48 hours after his or her arrest if not released on bail or warning', which means that police who have arrested an alleged offender are liable to complete the docket timeously in order to equip the prosecutor with the docket within 48 hours of arrest in order for the arrestee to make his/her first appearance in court. The process of having to complete a seven-step procedure for each of the many dockets that land on the desk of a prosecutor, and the need to adhere to section 50(1)(c) simultaneously, is both cumbersome (and in reality) borders on the impossible. In larger metropolitan areas 'between 100 and 300 dockets' (Matthews, 2009; Cartwright & Shearing, 2009) arrive at the courts just days before the stipulated court date. The attention to detail needed to craft a sound prosecutorial case demands a triad of time, patience and diligence, all of which hamper the expedition of CFM, therefore, resulting in case overloads and backlogs.

Drawing on the minutes extracted from Parliamentary Monitoring Group[24], factors causing unnecessary delays and postponements within the various courts are attributed to:

- Unavailability of dockets;
- Unavailability of documentary evidence ie forensic reports and pathology reports;
- The unavailability of Legal Aid for accused persons who require a court-appointed attorney owing to financial status;
- The absence of court interpreters; and lastly
- The absence of witnesses, complainants and at times an absence of the accused where the latter may have escaped or absconded from custody.

The above factors are not rare or 'new' attributes of backlogs; in fact the severity of backlogs can be traced back for many years, even to the early 2000s. In 2001, the Pretoria Magistrates' Court rolls were so gravely backlogged that a six-week initiative had to be implemented over the weekends in order to relieve court rolls of the huge number of pending cases. The initiative which coined the term 'Saturday Courts' rippled throughout the country. It was estimated that at least 24 months would be needed to clear backlogs, provided of course that no new matters were placed on the rolls within the 24 months.[25] Realistically speaking, it would be virtually impossible not to have new matters placed on the court rolls, irrespective of how strained the rolls were. A two-year no enrolment strategy would imply the stoppage and stagnation of criminal courts which would further exacerbate the issue, not solve it. The NPA, however, has endorsed a time period in which cases should be finalised within the hierarchy of courts – six months for District Courts and nine months in the Regional Courts. Furthermore, the District Court had about 12 per cent of matters on its roll which were taking longer than the NPA's six months target.[26] In 2008, a staggering R98 million was allocated to aid in the reduction of backlogs. Despite this generous capital injection, the number of case backlogs involving

[24] Parliamentary Monitoring Group, National Prosecuting Authority, Legal Aid Board Annual Report briefings, 30 May 2007, *http://www.pmg.org.za/minutes/20070529-national-prosecuting-authority-legal-aid-board-annual-report-briefings* (Accessed 12-09-2017).

[25] Koopman, A. 12 February 2001. 'R8m boost will help courts cope with crime' *IOL News. http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=ct20010212215506892T230680* (Accessed 10 -11- 2017)

[26] National Prosecution Services, 'Report to Select Committee on Security and Constitutional Affairs.' 21 May 2008.

awaiting trial prisoners who had been remanded in custody for a period of three months or longer tallied 13 per cent in the High Courts, 15 per cent in the District Courts and 34 per cent in the Regional Courts.[27]

Often the public perception of the justice system is linear; the triad of arrest, prosecution and conviction does not necessarily follow in sequence; often dockets deviate from this perceived linear format. The public should be educated on the dynamics and paradigms of the law as at times the wheels of justice turn slowly. Matthews (2009); Cartwright & Shearing, (2009) posit that citizens should be educated on alternative avenues that are available, including ADRs, as a form of recourse in order to alleviate the backlogs faced by our courts. In that regard Alternative Dispute Resolution (ADR) or the diversion of cases from the CJS is a pivotal mechanism which helps channel cases out of the system. As state actors and guardians of the law, prosecutors serve as intermediaries with government departments − SAPS, Department of Correctional Services and the Department of Social Work by promoting the cohesion of state players in an IJS. The NPA is empowered to divert matters away from court rolls by exercising ADR such as entering into plea bargains, social interventions, psychiatric observations and private prosecutions.

Private prosecutions acts as a lawful external source of justice and as succour for victims which may provide the NPA with the alleviation needed to ease court rolls. Although crimes are deemed as acts committed against the state, (Stevens & Cloete, 2014: 11) those who can afford private prosecution should opt for the diversion out of the CJS pipeline. This way fewer matters will be enlisted on the court rolls at less expense for the state. Additionally, private prosecutions in South Africa offer a solution to both the stagnation of cases as well as playing a vital role in driving democratic ideologies. Private prosecution attests to principles of blind justice where state institutions refrain or decline to prosecute individuals when political factors might be concerned.

A *lacuna* exists in the academic analysis of docket control, yet to be filled with comprehensive literature. The danger that prosecutorial and political bodies consider the contents and structure of the docket may skew the discretion of the

[27] Mbola, B. 'SA's courts to get R9bn overhaul.' 30 May 2008 Available at: *http://www.southafrica.info/news/court-300508.htm mbola* (Accessed 14/05/2017)

courts to hear and favour matters which benefit the executive arm of government. Thus, overarching powers on the judiciary may drive political agendas to manipulate the system (a problem that South Africa is no stranger to). AfriForum, as one of South Africa's civil-rights organisations, has prosecuted individuals in such situations. Such organisations symbolise the pinnacle of impartiality and democratic rule where state institutions are paralysed by political factionalism. As the NPA has failed to prosecute executives in the past due to what is believed to be political reasons,[28] it is worrisome that prosecutors performing docket screening may opt to bypass dockets which possess political undertones and toss such dockets into the 'reject pile'.

However, private prosecution is merely a secondary instrument for funnelling cases out the CJS; the primary solution lies with a strategic social intervention approach aimed at combating crime at grassroots level *before* a matter even enters the CJS pipeline – thereby reducing crime and preventing arrest, prosecution and detention, resulting in fewer cases (Matthews, 2009: 106; Cartwright & Shearing, 2009) (author's emphasis). The issue of reduction of backlogs is not solely the plight of the NPA and the judiciary but rather involves the synergised interplay of a conglomeration of departments and institutional actors of the CJS coming together to prevent cases from entering the CJS. As a result The Practical Guide for Court and Case Flow Management for South African Lower Courts[29] was published in 2006 to establish a synergised, accountable and apt IJS in order to enhance the efficiency of CFM. The Practical Guidelines for CFM has acted as the gauge for measuring court performance. This has eliminated practices being premised on corporate strategies such as KPIs by which court performance has been premised on the number of court hours consumed and prosecutorial performance being premised on the number of case life cycle times – from moment of enrolment to finalisation. The next section will focus on the Practical Guidelines for CFM which steers away from such KPIs and focuses on both individual institutional actor accountability as well as interdepartmental cooperation.

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[28] Petersen, Tammy. 15 Feb 2018. 'If NPA fails to prosecute Zuma, private prosecution will be put in motion - AfriForum.' *News 24* published in *Mail & Guardian* 15 February 2018 Available at *Mail & Guardian* *https://mg.co.za/article/2018-02-15-if-npa-fails-to-prosecute-zuma-private-prosecution-will-be-put-in-motion-afriforum* (15-02-2018)

[29] Justice College. *A Practical Guide for Court and Case Flow Management for Regional and District Criminal Courts in the South African Lower Court Division* (2010). *Pretoria: Independent Projects Trust*. 1-140

4 A Practical Guide for Court and Case Flow Management for Regional and District Criminal Courts in The South African Lower Court Division

South African justice departments have inculcated consumer-centric philosophies drawn from the private sector to facilitate the management and administration of court processes. It can be said that courts signify much more than just court performance; courts signify the vessel empowered to resolve disputes, further democratic rule and are therefore responsible for the administration of justice as whole. It is of apical importance that judicial officers, as fundamental substrates of the justice system, retain a degree of impartiality and independence throughout the delivery of justice.

Courts are the lynchpin between parties to a dispute and the courts as the preservation of the law and constitutionalism vests with the great inherent power of the judiciary. Docket screening performed by prosecutors has the potential of encroachment from external sources; therefore as external spectators to legal proceedings, it is quintessential that judicial officers assume the role of impartial adjudicators. In *De Lange v Smuts NO and others*[30] the court held that judicial officers are free of any undue influence, abuse or power from the prosecution and or another organ of state. Courts are responsible for conducting high-calibre cases premised on the merits of the case and without any bias or prejudice. The potential effects of systemic corruption within the courts where officials yield to politicised agendas would create a negative backdrop for the South African justice system and to South African jurisprudence. The 'puppeteering' of the judiciary by another arm of government may impede judicial independence by using judicial power to tip the scales of justice in favour of a certain individual or individuals – the antithesis of blind justice in South Africa. If South Africa were to extensively employ the doctrine of docket control as opposed to hearing any matter that comes before the courts, the growing problem of political factions within the courts would encroach on the power of the South African judiciary. Once dockets are screened the notion of having 'accept' and 'reject' piles of cases may materialise as happens in other democratic states; however, docket screening may not have the same ramifications in a highly politicised country such as South Africa in its search for 'complete democracy'. It is thought that complete democracy would encompass government institutions being at

[30] *De Lange v Smuts NO and others* 1988 (3) SA 785 (CC) at para [63]

liberty to execute their functions without having to be subjugated to political ploys and undue influence from external factors.

Whilst CFM is inherently the duty of the judiciary, in the quest for the alleviation of bottlenecks and bias, the responsibility of CFM is jointly shared with other institutional actors. Institutional bodies work together to enhance court productivity as court performance is based on the attitude and work ethic of institutional actors ordering court processes and procedure by utilising principles of NPM. The mandate and objectives of the Practical Guidelines for CFM are succinct – it asserts a collaboration of institutional actors intertwining to create the expeditious flow of cases. This approach will be expanded on below.

The documented number of case backlogs in South Africa is a stark and conclusive reality that cripples the efficiency of our courts. The technique of docket control may be contested by aggrieved parties as certain cases are given preference over others, as judicial officers and court managers are tasked with the duty to prioritise matters involving minors and juvenile detainees, first appearance detainees and accused persons who reside out of town. Children are given preference in criminal matters in order to minimise exposure to the CJS and thereby expedite their cases much more rapidly. Furthermore, a court roll hierarchy has been established to expedite the following matters timeously:

- Postponements
- First appearances
- Bail applications
- Guilty pleas
- Sentences
- Partially heard matters
- Oldest trials[31]

The hierarchy grades matters which require the least amount of time to the most amount of time. In addition to establishing such a hierarchy, several protocols have been imposed to prevent delays. For example court staff are expected to constructively utilise the full working court day from 8am to 4pm. Furthermore,

[31] Justice College. *A Practical Guide for Court and Case Flow Management for Regional and District Criminal Courts in the South African Lower Court Division* (2010). Pretoria: *Independent Projects Trust*. 6

public participation is notionally encouraged by which the public manages their own cases by using online systems. However these online systems are currently non-existent. Despite having a collective and integrated approach to the justice system, more often than not the workload encumbers prosecutors and judicial officers to the point where they are worn down by the numerous mounds of cases. Dating back to 2001, judicial officers have been separated from administrative tasks to enable them to focus on their primary function as adjudicators of legal proceedings. Court managers have assumed the role of masters of administrative functions for judicial officers and have been instrumental in reducing secondary functions of the judiciary. However, the same fortuitous tale cannot be said for prosecutors. It is often thought that the justice system should employ more magistrates and prosecutors, but the budget needed to employ more staff is insufficient. Instead of employing more staff, the CJS should look to training and skills development. As a possible alternative to a larger staff turnover, the researcher is of the opinion that the NPA can work with the resources at its disposal. The Aspirant Prosecutor programme, a year-long programme which inaugurates new candidates into the NPA through teaching skills and providing training equips the potential candidate to successfully transition to a public prosecutor on completion of training. Skills development is one of the areas to which government should appropriate funds as this lays the foundation for specialised public servants who, with advanced skills and expertise, will be able to assist the courts in reaching its optimum performance as well as exponentially accelerate court procedure, with less reliance on external experts. If the Aspirant Prosecutor programme had specialised modules and academic research areas such as forensic science in its programme, the need to employ a greater number of staff would not be necessary as the NPA would be in possession of specialised and scarce skills. The implementation of both human interaction through docket screening, judicial intervention and oversight in combination with technological advances in court systems are the primary drivers siphoning case dockets out of the court system. The aim of the CJS is to provide solace, justice, retribution and restoration of peace and order in social settings. The antithesis would be a deprivation or violation of fundamental human rights. Where a scarcity of skills exists it is left to technology to fill in the gaps and to aid institutional actors in their mandate to speed court processes for the betterment of the public.

CONCLUSION

Democratic rule has established itself as the impetus steering South Africa away from the travesties of the apartheid era – it has thus become mandatory for government departments to become transparent and accountable to the people they serve. Despite NPM principles and privatisation which has been anchored in South Africa's public service delivery modalities, there has been a breakdown in governmental tasks and the ability for systems to operate effectively. The added benefits of PPP however, are the cost benefits to the state and high-calibre work performance for the consumer. South Africa has aimed at drawing parallels from the rich pool of experience of other countries in crafting an IJS which will become a collaboration of various departments, co-operating to give effect to a successful venture. The intertwining of multiple departments and empowerment of government officials has the potential to proliferate into overlapping, unwarranted and undue influence over the judiciary. This overlap of executive and judiciary caused by the executive's oversight in judicial proceedings may expose loopholes for corruption where officials lack objectivity. By the same token, however, executive oversight where no prejudice or bias exists has the potential to radically transform the justice system and the speed with which justice is dispensed. The public look to courts as gatekeepers of the law and all that is just and righteous – courts should not become the breeding grounds for illicit conduct and unethical or political agendas which transgress the mandate of the Constitution but rather produce meritorious precedents. Case overloads and the continuous backlogs have been instrumental in innumerable human right violations, injustices and miscarriages of justice. Such misfortunes are unintentional but rather a snapshot of litigious reality as daily practice overrides theoretical timelines, guidelines and frameworks. In some instances this can be avoided by the right attitude, and the work ethic of institutional actors. What will be discussed in the next chapter are the ICT projects that South African governmental departments have integrated into the CJS in order to have an integrated network amongst institutional actors. In addition, the next chapter will illustrate the pros and cons of having automated systems and the ramifications of the timespan needed to acquire fully-fledged automated systems. While these systems remain inoperable, paper-based dockets bear their own issues and pitfalls, which will be discussed in detail.

Chapter Three:

The Current state of the South African Case Docket System

Technology has to a great extent been integrated into multiple justice spheres to enhance production and overall system performance. Computers and software programmes are but a small step in the strides of technological advancement. Various departments and stakeholders within the justice system should be applauded for taking drastic measures to deal with severe backlogs. However, CFM is but a small justification for the employment of ICT systems in South African courts. Although the challenges of CFM are manifold, the utilisation of technology has been espoused due to its perceived benefit in aiding in governance issues and not just for its ability to assist with CFM. These governance issues are said to emanate from corruption ie the intentional loss, destruction or misplacement of paper dockets. But will technology really solve the underlying docket crisis or is it merely a reaction to the problem? Record-keeping and the administration of government documents has been recognised as one of these problems. So where does technology fit into the equation of governance and docket management? Clearly, a heavy reliance is being placed on technology to shift the mindsets of institutional actors by being more user-friendly than paper dossiers in the hope of removing docket culture from our police stations. But if the conduct of institutional actors can be attributed to maladministration of dockets then surely a need for the modification of governance frameworks exists. This chapter examines the current state of the docket system in South Africa and will address the following issues:

- An introduction to the e-Docket system;
- Its effectiveness in countering some of the administrative issues of case dockets as well as paper-based dockets and the implications of docket overloads on police officials and unscrupulous behaviour of officials regarding the administration of police dockets.

1. INTRODUCTION

Technology is rapidly revolutionising the world of work as it enhances communication and collaboration with the rest of the world. The expansion of technology within global CJSs over the span of the decades has been monumental. Kumagai (2002) asserts that the use of robotics in the form of drones in American policing has amplified SWAT teams' work performance. Social media has also become part of the technological change in disseminating crime related information. Social media allows public engagement and reporting through platforms such as Crime Stopper or Crime Watch. Moreover, neighbourhood watch groups and CPFs have used text messaging social media such as WhatsApp and Facebook to keep the public abreast with current events in their localities. In addition Kelso (1998) states that ICT projects include video technology/conferences, and closed circuit media. The adoption of video graphic technology would be opportune within the South African context as many detainees are held for more than 48 hours before making their appearances in court. Detainees would be able to have their first appearances at the police station where they had been remanded in custody without having to be transported to and from the courts. Administration advances is only a small factor in a wider technological framework, but a significant part nonetheless. It is fundamental to focus on the docket administration in the 21st century because in order to have a transformational government, the issues crippling the system must be predetermined.

Despite the democratic dispensation, issues gripping the CJS system post-1994 have been several human rights violations, marginalisation, corruption, political power plays and under-resourced institutions. Democratic states have looked to and invested in ICT to better equip professionals with the technology needed to execute tasks more swiftly and to tackle the practical dilemmas faced by many institutions. The e-Docket system is an electronic data base comprising scanned copies of dockets which are indexed on to the Crime Administration System (CAS). This system is meant to facilitate data integrity, in which scanned dockets cannot be deleted, altered or removed once a case docket has been scanned and uploaded on to the central system. Technology such as e-Dockets help cases that are already in the system and alleviate strained court rolls. However, the implementation of such a system involving western ideologies in a developing country such as South Africa is bound to throw up many challenges. Antiquated practices, infrastructural and technological issues within South African police stations and courts including the lack of advanced

human capital capabilities may hamper the use of automated systems. The e-Docket system is said to take up to 20 years to be implemented nationally. Until the e-Docket system has been fully implemented, the justice system faces some critical issues.

Indeed South Africa has drawn from the ideologies and paradigms of global experience, yet much is left to be desired from a 'South African approach'. The use of ICT systems should enable the public to report crimes online. As a country renowned for its high incidence of rape[32], online reporting systems for rape victims would prevent complainants having to endure facing male police officers in reporting crimes. This would be a great incentive to report such crimes. The issue of underreporting will be discussed in the next chapter. Furthermore, electronic docket management in South Africa has not followed the international models of e-government which have initiated projects by initially having a civil integrated system before adopting the system in the criminal justice arena. Civil disputes which are fundamentally an exchange of documents would have been the ideal sector to introduce an integrated document system before introducing it in a complex sector such as the CJS. Having a pilot project within the civil courts would have given South Africa the exposure it needed to conform to the revolutionary regime of electronic case management.

Great reliance has been placed on technology in both state and non-state bodies to help facilitate an effective justice system. It requires not only commitment and determination from more than a single department, but is dependent on the collective external role players such as private prosecution practitioners and the public. The issue of an IJS has proved to be rather elusive as a great part of an IJS includes public participation and public use of ICT systems. The success of electronic systems is dependent on the usability of the systems as well as consumer engagement, as public participation is thought to stimulate pubic administration through e-governance (Farelo & Morris, 2006). However, in order for consumers to actively participate, a consumer must have first computer literacy skills to operate electronic devices and secondly a stable and rapid internet connection. The next

[32] Rape Crisis South Africa. Rape in South Africa. Available at: *https://rapecrisis.org.za/rape-in-south-africa/* (Accessed 16-02-2018)

section will examine the adoption of ICT systems namely the e-Docket system as well as the mechanisms put in place to support these systems.

2. THE IMPLEMENTATION OF ICT IN THE SOUTH AFRICAN CJS: THE E- DOCKET SYSTEM

One of the primary objectives of the IJS, in addition to crime prevention strategies, is to restore public faith in the justice system by ensuring the effective management and administration of case dockets by minimising human activity through technology.[33] For South Africa, the desire to adopt automated systems is both economic and social in nature (Farelo & Morris, 2006) as it harnesses and encapsulates the doctrines of the 'new' democratic South Africa. However, the integration of automated systems demands the viability of infrastructure needed to capacitate electronic systems, the fiscal muscle needed to successfully adopt the electronic systems in all CJS sectors throughout South Africa, resources to sustain the systems and the attitudes and willingness of institutional actors to adapt to new systems. Therefore, the implementation of ICT is dependent on the feasibility of the ICT projects and whether or not South Africa has the requisite fiscal muscle. The issue of feasibility may impede ICT projects within the country as the hurdles of implementing high-tech systems comes at the price of skilled technicians required to operate these systems. Notwithstanding the exorbitant amount which been pumped into technological services the project has been approved, as the diagram below (Diagram 1) depicts the 2014/2015 expenditure injected into the CJS in order to fund a multi-million rand ICDMS project.

[33] The Criminal Justice System Review (CJSR). Business against Crime South Africa Annual Report 2009-2010 (23-25)

INVESTIGATION CASE DOCKET MANAGEMENT SYSTEM (ICDMS) – ADMINISTER CASE

SAPS IJS SUB PROGRAMME: PLANNED QUARTERLY BUDGET FOR 1 APRIL 2014 – 31 MARCH 2015 VERSUS ACTUAL EXPENDITURE FOR QUARTER 4

	QTR 1 APR - JUNE		QTR2 JULY - SEPT		QTR 3 OCT - DEC		QTR 4 JAN - MRCH	
Planned Expenditure	6 171 376		29 804 101		7 929 808		61 171 869	
Actual Expenditure	3 082 200	50.00%	12 795 880	42.93%	8 615 897	108.65%	61 706 316	100.87%
Total Expenditure & % Planned versus Actual Q1 to Q4 (31 March 2015)							86 200 293	100.62%

TOTAL ALLOCATION 1 April 2014: R 76 580 050
REVISED ALLOCATION 21st March 2015: R 85 665 846

None/Less [50%] of Planned Expenditure | Less than [90%] of Planned Expenditure | Achieved/Exceeded [90%] of Planned Expenditure

Diagram 1: SAPS Planned budget for ICDMS April 2014 – March 2015 (Source: South African Police Service. Integrated Justice System (IJS) Division: Technology Management Services. SAPS IJS - Sub programme: Planned quarterly budget for 1 April 2014 – 31 March 2015 (p. 31)

Electronic systems demand constant software upgrades and are highly susceptible to malfunctions and hacking. Inadequacy of security frameworks for records management could see government paying the legal cost of ethical violations (Laudon & Laudon, 2005; Ngope & Ngulube, 2011). It seems that the excessive expenditure on high-tech systems is being prioritised over projects involved in reducing the number of dockets coming into the CJS pipeline through crime intervention and crime prevention mechanisms. The latter projects could address the issue at grass roots.

Some of the ICT projects that have been implemented in South Africa aim to integrate and monitor CFM within the various departments; however, an integrated approach between private and public entities does not always yield a fruitful business transaction. With the procurement and implementation of the e-Docket system, multilateral state-owned companies (SOCs) such as Eskom and Telkom are pivotal in facilitating the constant and a reliable supply of electricity, cabling and telecommunication networks required to effectively operate automated systems. State-owned enterprise, SITA, or State Information Technology Agency, was inaugurated in 1998 to accommodate and cater for the technological needs of

government (Schönteich, 2004). The creation of a transformational government in South Africa has depended on the performance and output of enterprises such as SITA to deliver professional and credible public services on behalf of state. SITA is responsible for the implementation of IT systems which assist the state in circumventing corruption and systemic or internal failure, and provide effective, reliable and traceable electronic docket system between institutional role players.

By law, the SAPS is mandated to employ the services of two statutory bodies as its service providers, namely the Department of Public Works and SITA. The repercussions of this mandate imply that the SAPS will allocate a budget to the statutory bodies in order to hire the services of a third party contractor. SAPS have claimed to have missed deadlines as a great reliance on third party contractors has led to the failure of six of the SAPS' 24 projects.[34] This raises the question of whether frameworks have been put in place to avoid the perpetuation of a lax work ethic as well as assigning accountability to third parties. The Integrated Case Docket Management System (ICDMS) has been in existence for over 10 years (2009) and the project is set to replace the predecessor, the Crime Administration System (CAS).[35] Since multiple projects have been initiated by the SAPS, many projects will be prioritised over others. Six electronic CMSs have come into being, each department and role player having its own system in the nexus of the CJS, viz:

- SAPS – Integrated Case & Docket Management System (ICDMS);
- The Department of Justice and Constitutional Development – Integrated Case Management System (ICMS: CRIM)
- NPA – Electronic Case Management System (ECMS);
- Legal Aid – Electronic Legal Aid Application (eLAA);
- Department of Social Development – Child Protection Register (CPR);
- Department of Correctional Services – Integrated Inmate Management System (IIMS) and;
- Department of Home Affairs – Automated Fingerprint Identification System (AFIS)

[34] SAPS Shadow Report Analysis of the SAPS Annual Report - A community perspective. *Ndifuna Ukwazi Publishers* 2012/2013 4-33

[35] SAPS. 'Progress with the new Investigation Case Docket Management System (ICDMS) Project for the SAPS*'. SAPS Magazine* 6, January 2015

The diagram below (Diagram 2) illustrates the multitude of both state and non-state bodies amalgamating to create an IJS called the *SAPS Integration Strategy* in which a PPP will enable the case life cycle to be automated from beginning to end, initiating the exchange of data from one institutional body to the next.

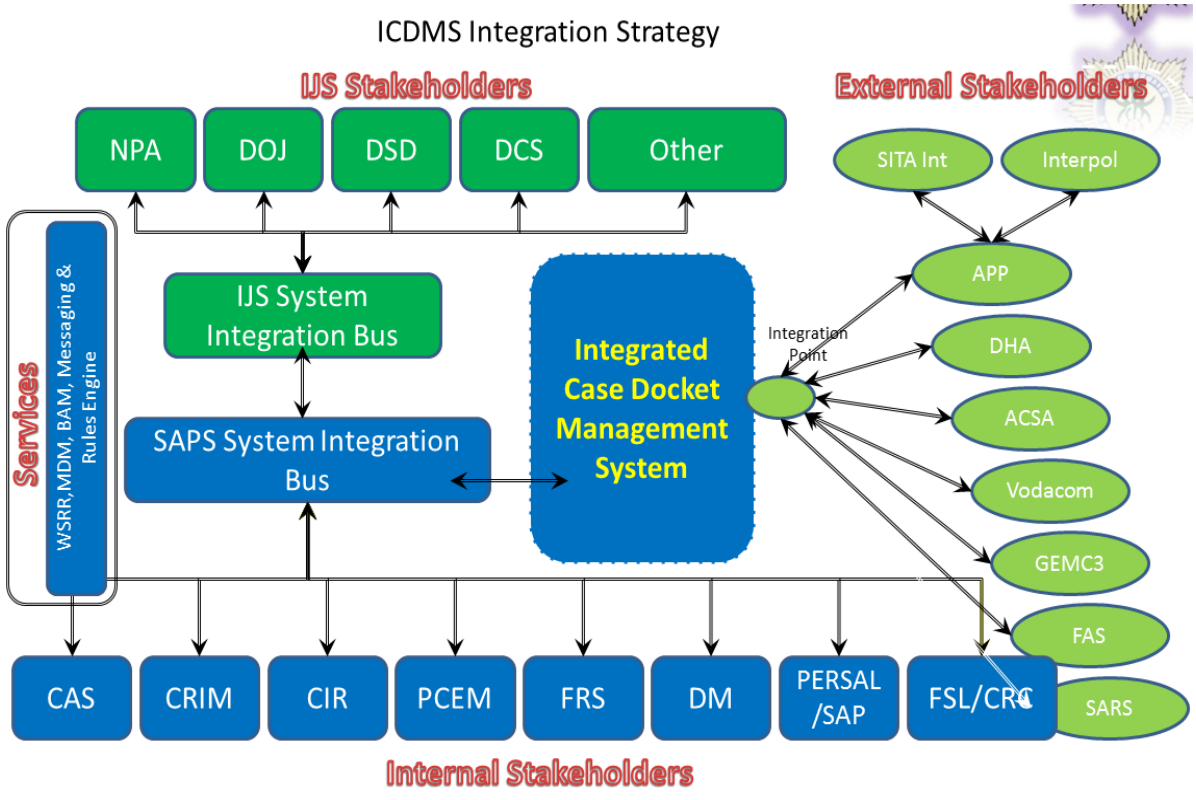

Diagram 2: ICDMA Integration Strategy (Source: South African Police Services, SAPS TMS - ICDM Project. Project Status April 2013. Power point presentation slide 7)

The problem of having multiple systems which make up the IJS within the CJS is that each of the seven institutional departments has a separate system t. Although the systems are interlinked, the IJS strategy may be futile as these island projects run the risk of failing. The island projects in Europe, which had been interlinked, suffered a massive blow as the issue of isolation and a lack of uniformity caused the systems to fail, hence the adoption of a uniform system − the e-CODEX system. Therefore, it is imperative that South Africa draws from the experiences of other countries in order to avoid facing similar issues and shortcomings in the near future.

The establishment of the electronic docket or e-Docket system, an electronic data base, has been one of the fundamental ICT projects within South Africa's CJS. The establishment of a centralised e-Docket system where the nation's capital would house the information systems is said to facilitate data integrity and tracking

apparatus as the scanned dockets cannot be deleted or removed. In addition, the e-Docket forms part of the IJS as it allows an interprovincial exchange of information which endorses synergy amongst the nine provinces in combating crime. In theory, the e-Docket comes as a saving grace to the old practices of docket administration because technology eliminates the human factor which may produce errors. However, in practice integrating new technology is bound to encounter hurdles as the e-Docket system itself is not immune to issues of corruption and influence. The e-Docket system enables police to manually create electronic versions of case dockets or scan paper-based dockets into the system as it integrates the uploaded electronic files with the courts and other institutional actors in order to establish a channel of communication between the police and the courts.[36] As mentioned before once a docket has been created it cannot be deleted, altered or removed. Why this may be considered problematic is that the e-Docket system does not act as an online interactive platform in which the status of case dockets can be updated and edited (if need be.) Because the e-Docket comprises scanned copies of the original docket, it rather serves as an electronic repository and not as a digitalised document that locomotes between institutional actors. In practice each time a postponement or progress has taken place, the detective responsible for the docket will make a note of the change on the face of the docket cover. Since the e-Docket cannot be edited, the paper dossier would have to be scanned and uploaded with each step of the case in progress. The researcher proposes that the inability to edit dockets online will cause great frustration as irate officials will have to constantly scan and upload dockets − an imposition on time needed to fight crime.

The transition from paper-based dockets and other court documentation to automated systems consequent upon the resources and time vested in performing 'clerical tasks' (Schönteich, 2004) and administrative functions by prosecutors as opposed to managerial staff has almost doubled the efficiency of court performance. In 1997, prosecutors stationed at the Cape Town Magistrates' Court spent roughly 3 000 hours per year preparing copies of dockets for defence counsel.[37] The e-Docket system has many benefits over the paper docket system. The electronic system alleviates duplication of data, is time saving, enables SMS notifications to be sent to

[36] SAPS Shadow Report Analysis of the SAPS Annual Report - A community perspective. *Ndifuna Ukwazi Publishers* 2012/2013 4-33

[37] F W Kahn. 'Annual Report submitted by the Attorney General of the Cape of Good Hope.' (1997) 19

affected parties regarding the status of their cases and reduces the strain of paperwork (Omar, 2009). Furthermore, grammatical errors, the deterioration of paper and materials, faded inks, lines and the storage deterioration which hinder the longevity of case dockets cannot easily be corrected and rectified. An automated system does indeed have its flaws, however, in lack of resources and skills, failure in monitoring of dockets, management deficiencies and lack of maintenance, system failure, incorrect data capturing and other pertinent issues that grapple the system.

The manner in which dockets are created, captured, stored, and delivered to and from the office of the prosecutor are vital to limiting of the longevity of the case as well as facilitating the commencement of a criminal trial. The e-Docket nucleus is centred in Pretoria and is expected to take at least 20 years to complete; however, the fear exists that the system will be outdated by time of completion.[38] Police IT systems and the necessary infrastructure will require an additional 10 years to install at all station levels within the country. Irrespective of how spectacular the project may seem, roll out has been slow as, within the social construct of South Africa, the need to invest in technology and infrastructure is secondary to the socio-economic woes faced by many rural and urban developing regions in the country. Many police stations around the country are positioned in remote and rural areas meaning that internet access and cabling would be some of the hurdles faced by the Department of Safety and Security in its quest to fully implement the e-Docket system nationally. In addition to electricity and cabling, office equipment and critical tools are necessary to scan and upload case files on to the e-Docket system; more often than not these services are either vague, not in operation or totally non-existent within the rural settings of the country. This questions the reliability and effectiveness of the technological advancements made through the introduction of the e-Docket system, and demonstrates how adopting ideas from the West may impose stumbling blocks to advancing projects. A lack of training, inadequate infrastructure and resources may be the reason why policemen often revert to paper dossiers to avoid operating technological systems, as paper dossiers have been the medium of choice for many decades. Although proving beneficial, a newspaper article headlined ‘E-dockets land

[38] Capazorio, Bianca. ‘E-dockets land cops in dog house.’ *IOL News*. 20 April 2013. Available at: *https://www.iol.co.za/news/crime-courts/e-dockets-land-cops-in-dog-house-1503647*. (Accessed 14-08-2017)

cops in dog house'[39] reported that some police officials were resisting the technological movement. Instead, officials had opted to use the old paper-based system and were obstinate in not veering off their comfort zones and utilising ICT projects. Despite the integration of ICT both in and out of courts and the time span and resources needed to facilitate the proper functioning of an IJS in South Africa, a grey area in which the administration and management of dockets may be skewed is prevalent. The convenience of paper dockets seems to outweigh the use of technological systems; however, paper dockets bear issues of its own. Given the physical and tangible nature of case dockets which are in paper form, the flimsiness of paper material is further exacerbated by the constant handling and movement of files to and from courts and police stations. In addition, the nature of paper permits evidence compiled in a docket to be easily manipulated or erased thus exposing material to forms of corruption and criminal conduct. The next section will elaborate on the loopholes where docket maladministration has been able to thrive in the absence of and/or unutilised automated systems.

3. THE SOUTH AFRICAN PAPER-BASED DOCKET SYSTEM

> 'Our court dockets are so crowded today it would be better to refer to it as the overdue process of law.' – Bill Vaughan

There exists a need to revolutionise the CJS, and the hope is that docket loss and theft statistics will be significantly reduced to the benefit of affected parties such as victims and complainants, who often suffer the brunt of corruption within the CJS (Omar, 2009). Existing corruption within the South African police emphasises the need to advance to an automated system of court documents much more rapidly than at the current pace. A fully-fledged e-Docket system is said to take up to 20 years to complete; until then paper-based dockets are the uniform medium of case dockets throughout the country as many police stations and courts are yet to receive ICT systems. Paper-based dockets have presented their own problems and therefore it is imperative that this does not become a window of opportunity for corrupt or criminal activity. A prevalent issue over the past decades has been the problem of missing or stolen dockets which is a cause for serious concern. Missing case dockets have been described as an epidemic plaguing the CJS, which has been documented by the

[39] Ibid.

media and institutions in the past. In addition to local newspapers, disgruntled victims of docket loss have taken to social media and various platforms to vent their anger and frustration at lost dockets and the manner in which it has adversely affected their lives. A prominent local newspaper the *Mail & Guardian* had reported on the scale and nature of the docket issue:

> A recent parliamentary response by the Minister of Police, Nathi Mthetwa, regarding missing case dockets, showed that 688 dockets had gone missing from stations across the country in the period April 2008 to February 2009. North West Province reported the highest number of missing dockets at 260, while KwaZulu-Natal reported 132 missing dockets.[40]

The intentional or unintentional mismanagement of case dockets has been linked to key features ranging from understaffed and under-resourced police stations, lax codes of conduct, docket storage facilities which lack adequate security systems, corruption, insufficient checks and balances and a lack of supervision. Furthermore there have been reports of political influence resulting in the SAPS and NPA withdrawing cases and stalling matters that have been occupying court rolls for months, resulting in acquittals or matters being struck off the roll.[41] This relates back to the encroachment on the functions of institutional agencies and seriously questions the behaviour of officials in the CJS in the absence of governance frameworks. What will be addressed in this section are the issues of governance, leadership and corruption under IPID, the role of institutional actors in the facilitation of criminal conduct and the abuse of positions of trust; and parliamentary debates and discussions regarding docket storage facilities and the lack of adequate security systems at police stations. Furthermore, this section will touch on the Khayelitsha Commission of Inquiry report on the issues of case overload and human error at three Khayelitsha police stations.

3.1 Governance issues

Corruption

The need to combat systemic police corruption has been hotly debated. The unethical and malicious behaviour has provoked numerous parliamentary discussions over the

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[40] 'Missing dockets hamper prosecutors – inquiry'. *News24*. (2014) http://www.news24.com/SouthAfrica/News/Missing-dockets-hamper-prosecutors-inquiry-20140206 (Accessed 01-04-2017)

[41] Molosankwe, Botho. . 'Shock as strong cases lost by incompetence.' *IOL News* 4 July 2013. Available at: https://www.iol.co.za/news/crime-courts/shock-as-strong-cases-lost-by-incompetence-1542125. (Accessed 19-08-2017)

use of paper-based dockets, as the integrity of the SAPS is often questioned. One police official confessed to the epidemic gripping his station by professing that docket loss may occur in numerous ways − often police officers take bribes to destroy or 'lose' dockets (Grobler, 2013). Additionally, Grobler (2013) asserts that where the police officer performs sloppy paper work, dockets are often intentionally lost to reduce workloads. The prevalence of docket culture masks unprofessionalism within the workplace where it goes unnoticed and unattended. An IJS comprises of 'interdependent links' conglomerating to achieve a common purpose of an integrated system premised on the ethos of the Constitution.[42] The use of an integrated strategy entails policy implementation by 'interdependent links' to fulfil the criteria of two key aims in reducing unethical behaviour within the SAPS. The two key aims are enhancing work ethic and professionalism within police stations, as well building upon the integrity of policing in South Africa; and increasing accountability for nefarious and immoral behaviour (Burger, 2017). The Anti-Corruption Unit or ACU has been tasked to regulate the management of SAPS to combat systemic corruption. The Independent Police Investigating Directorate (IPID) defines systemic corruption as:

> An institutionalised, endemic manipulation of a system by individuals or networks/organisations, taking advantage of weakness in the processes and systems for illicit gain, where there are leadership deficiencies, collusion and/or abuse of power." (Burger, 2017)

Statistics released by the IPID annual reports[43] suggest that the problem of reported cases of lost, stolen and misplaced dockets has increased. The IPID 2012/2013 annual report reveals that some of the most frequently occurring complaints made against SAPS officers relate to the theft and sale of exhibits, destruction of dockets and soliciting bribes from offenders (Grobler, 2013:1). An analysis of statistics over the last four years reflects the steady increase in the number of incidents of corruption reported – sale, theft and/or destruction of police dockets. During the 2012/2013 financial year the number of incidents was 10, two incidents in 2014/2015[44], 12 incidents in 2015/2016[45] and 18 incidents during 2016/2017.[46]

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[42] Du Rand, Pieter. *Towards an Integrated Justice System Approach. CSVR*. Available at: *http://www.csvr.org.za/images/cjc/towards_an_integrated.pdf* (Accessed 27-12-2017)
[43]IPID. Annual Report 2012/2013 Financial year Vote NO. 20 (31)
[44] IPID. Annual Report 2014/2015 Financial year Vote NO. 20 60
[45] IPID. Annual Report 2015/2016 Financial year Vote NO. 20 66
[46] IPID Annual Report 2016/2017 Financial year. Vote NO. 20 48

Despite the decline in numbers during the 2014/2015 financial year, the sharp increment of stolen and unaccounted dockets has cast the spotlight on the administrative capabilities of the SAPS and the NPA. In 2009, former Minister of Police, Nathi Mthethwa, proclaimed in a briefing in Parliament, the need for the e-Docket system:

> Under this system, dockets will be scanned into the electronic version and kept in the court's electronic files, to avoid cases being struck off the roll or postponed due to the loss of dockets. It will also help to synchronise information between correctional services and the prosecution, to avoid delays which could arise when prisoners are required to appear in the courts at particular times.[47]

The abuse of power by institutional role players responsible for docket management and the rampant collusions taking place within police stations are causes for concern. Often police management has been called to attention for improper monitoring and inadequately preventing police corruption and internal abuses. On the 26 October 2006 the National Commissioner of the SAPS appointed a Police Advisory Council (PAC) to report on the state of both service delivery and crime in South Africa. The PAC had been inaugurated in regard to section 34(1)(i) of the South African Police Service Act.[48] The PAC report issued in 2008 suggests that no policy adaptions or strategies had been implemented to obviate the effects of systemic corruption.[49] It appears to be that leadership has placed technology at the forefront to mask governance issues and the lack of disciplinary action against transgressors within the organisational structure. However, the implementation of secure databases and information systems to aid in the investigation of systemic corruption are seemingly painstaking tasks. This is owing to the nature of police work, which gives police officials access to covert documentation and information, normally not accessible to unauthorised persons. Thus, secure databases and information systems would preserve the integrity and give credence to the investigations against corrupt officials by acting as an instrument asserting checks and balances within investigations. The classification of corrupt cases relates to offences, such as defeating the ends of

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[47] 'SAPS to develop system to stop loss of dockets.' *South African Government News Agency*. *http://www.sanews.gov.za/south-africa/saps-develop-system-stop-loss-docket* (Accessed 01-04-2017)

[48] South African Police Services Act 68 of 1995

[49] Hosken, Graeme. 'SAPS Boss slammed for 'benign neglect.' *Pretoria News*, CSVR – Centre for the Study of Violence and Reconciliation, 9 September 2008. Available at: *http://www.csvr.org.za/media-articles/latest-csvr-in-the-media/2064-saps-bosses-slammed-for-benign-neglect-090908*. (Accessed 19-08-2017)

justice, abuse of power, intimidating witnesses, interfering with investigations, theft or destruction of dockets for monetary purposes and receiving rewards and gifts in exchange for failure to act in accordance of the law.

One would have thought that the docket crisis should have improved and policing management should have resurrected itself from the battering of the media, NGOs and independent institutions. The Khayelitsha Commission of Inquiry (KCOI) was an independent establishment of the Premier of the Western Cape through proclamation on the 24 August 2012 to investigate allegations by residents of ineffectual policing in Khayelitsha. The commission had been headed by former Constitutional Court Justice Kate O'Regan and former NDPP, Advocate Vusumzi 'Vusi' Pikoli, and they were responsible for the publication of a report emanating from the commission's findings into the alleged injustices in Khayelitsha. The report, an empirical study, is titled Towards a safer Khayelitsha: Report of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha.[50] The report is a comprehensive analysis that investigates the issues behind police inefficiency, the perceived justifications and rationales and the appeals of the communities in Khayelitsha.[51] The data set out in Table 1 shows some of the major shortcomings of docket management to have included absence of dockets, dockets not arriving at courts timeously or at all and the documentation absent from the dockets ie forensic reports such as DNA results, post mortems and J88 forms.[52]

[50] *Towards a safer Khayelitsha*: 'Report of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha.' August 2014. 63-103

[51] Khayelitsha Commission. Available at: *http://www.khayelitshacommission.org.za/* (Accessed 12-12-2017)

[52] *Towards a safer Khayelitsha*: 'Report of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha.' August 2014. 63- 103

No. of cases	No. of dockets	Offence	Victim's Charges/ criminal record	Suspects arrested	Outcome	Failure to follow prosecutor's instructions	Failure to follow inspecting officer's instructions	Failure to follow b/f dates	Failure to bring to court
Total No. of cases mentioned in 'Bundu Courts' document	78								
Dockets not given to Commission	7	Murder (×7)							
Wrong CAS number (also not given to Commission)	1								
Duplicated cases	5								
Dockets not related to 'bundu court'	3	Murder ×3							
Dockets analysed (includes non vigilante cases)	66	58 = murder 2 = double murder 2 = triple murder 1 =Murder & kidnapping 3= attempted murder	13	31	2 convictions 2 Struck off roll 2 nolle prosecui 3 inquest court 2 High Court 4 withdrawn, incomplete investigation 3 provisionally withdrawn	23	42	14	3

Table 1: Issues dealt with from three police stations in Khayelitsha from April 2011 to June 2012. (Source: *Towards a safer Khayelitsha*, 2014:215)

The pragmatism behind the Commission's report reiterates the dire need to adequately regulate the administration and management of case dockets across the country, through intervention and mediation. Research conducted at Harare police station in Khayelitsha indicated that only 23.48 per cent of its station's cases landed up at court as delayed dockets were often the result of human error and intervention.[53] 'Human error' is an expansive and umbrella term that can be interpreted either as intentional human error or unintentional human error. Several matters of intentional misconduct by human intervention resulted in numerous precedents being generated as many officials were tried in court for their role in docket theft/destruction or sale. In *S v Boschoff*[54] a police officer had admitted before the Grahamstown High Court that he had solicited funds from suspects in order to destroy evidence contained within dockets. Additionally, the officer had admitted to obstructing the course of justice in which he had been incited to plant

[53] Stegeman, Kate. 'Dysfunctional detective units, disappearing dockets and a dereliction of duty: Meet Khayelitsha's police.' *Daily Maverick*. 26 February 2014. Available at: *https://www.dailymaverick.co.za/article/2014-02-26-dysfunctional-detective-units-disappearing-dockets-and-a-dereliction-of-duty-meet-khayelitshas-police/#.WZnjlD4jGM8* (Accessed 14-05-2017)

[54] *S v Boshoff* (CA &R 390/12) [2013] ZAECGHC 102; 2014 (1) SACR 422 (ECG) (27 September 2013)

firearms stolen from the SAPS in a suggestive manner that would implicate certain individuals. Newspaper reports from the Mail and Guardian claim that police officers have been enticed to 'lose' dockets for R25 000. Another in the Johannesburg metro had been offered R1 000, 00 by a hijacking syndicate to destroy evidence contained in the case docket.[55] Treating dockets as commodities by selling dockets to defendants as well as incidents of 'selling' information contained within the docket such as names of witnesses were among the common complaints received by the IPID (Grobler, 2013). The ability for dockets to be given to any person who assumes or falsifies a certain ranking relays a deeply negative message regarding the security and sanctity of the docket. The response of the executive, leadership and members of parliament has not always satisfied victims of docket loss, destruction or misplacement. However, several commentaries have been alluded to which are thought to assist in counteracting these collusions. Whether or not they convey the urgency is questionable.

3.2 Executive and legislative action and reactions to the rampant issue of stolen, missing, destroyed dockets.

Former Minister of Police Nathi Mthetwa (incumbent 2009-2014) describes the national figures and statistics as an underestimate of the true number of missing or stolen dockets. The reasons for the underestimate were first that the exposure of missing or stolen dockets would cast the respective police stations in a negative light and mirror the poor performance of stations nationally. Secondly, the underreported figures given by provincial officials served as the data base from which crime statistics were drawn. The former minister claimed that missing or stolen dockets should be detected within 24 hours of their absence (subject to routine guideline adherence, not followed by officials, hence, the reason why many dockets 'fell through the cracks'). He added that the absence of proper leadership and governance policies had exposed the loopholes in docket administration. If adequate systems were put in place, dockets would not fall into these 'cracks'. Former National Police spokesperson Ronnie Naidoo has insisted that missing dockets were not much of a problem as the number of dockets opened were in fact greater in number the number of dockets reported missing. He added that the number of missing dockets had not reached a stage where the public should be concerned, as lost dockets were usually in

[55] Groenewald, Yolandi. 'Missing dockets are not a problem' *Mail & Guardian* 21 Dec 2006 Available at: https://mg.co.za/article/2006-12-21-missing-dockets-are-not-a-problem (Accessed 12 – 05 -2017)

court or stolen. In response to these staggering figures, former Safety and Security Minister Charles Nqakula (incumbent from 2002-2008) announced that of the 373 dockets that were missing, 209 had been lost at police stations, 135 dockets were lost at court and the remaining 29 were stolen. The aloofness of the SAPS spokesperson and the National Commissioner relay a disturbing message for parties affected by missing, stolen or lost dockets as the gravity of the situation has been overshadowed by claimed ignorance and denial.

In Mistry's case study titled 'The dilemma of case withdrawal: Policing in the "new" South Africa' (Mistry, 2000) the author conducted structured interviews with various stakeholders at Khutsong in Johannesburg and Upington, De Aar and Kimberly in the Northern Cape respectively. An analysis of case dockets and interviews from the respective areas disclosed the aversion of police officials to engage in tedious paper work ie opening of case dockets and proper docket management – a testament to docket culture. Police officials reportedly did not also follow proper protocol by having the correct paper work filed into the dockets – for instance, affidavits of complainants who withdraw their cases are absent from the case dockets. Witness testimonies can form the bedrock of prosecutions (given the existence of concrete evidence *aliunde*). Of the various stakeholders interviewed, 28 per cent of the Khutsong residents said that police officials asked for or received monetary incentives in order to destroy files and case dockets. Reports of governmental institutes mandated to oversee the functions of the SAPS executives should be able to stand up against any scrutiny given by MPs. It is the responsibility of IPID to take to task and to impose sanctions or disciplinary action against transgressors as it deems fit. The following section will expand on parliamentary reports and minutes that question the leadership capabilities of the police oversight body, IPID.

3.2.1. Parliamentary Reports: Issues raised by MPs in response to the docket crisis.

This section will highlight some of the broad observations relating to the issues broached in the parliamentary discussions below as well as the administrative and governance issues regarding storage facilities, docket management, security systems and the docket loss statistics. The justification for outlining some of the parliamentary discussions is to understand the issues which have been circulating at both provincial and national level:

Parliament. National Assembly, 2009. Internal Question Paper, Sixth session, Third Parliament: 69. Moulana M R Sayedali-Shah (DA) to ask the Minister of Safety and Security: The latter MP had queried with the former Minister as to the number of dockets that had been lost or stolen during the 2008 financial year and if any of the missing dockets had resulted in disciplinary hearings or any form of action or sanctions taken against the transgressors

Parliament. National Council of Provinces, 2010. Internal Question Paper, Second session, Fourth Parliament. No. 78 (14 May 2010). Cape Town: Parliament. (p.78): 177. Mr D A Worth (DA-FS) to ask the Minister of Police: The figures regarding missing or stolen case dockets for the years 2008/2009 and if any of those missing/lost dockets had been due to severe and complete negligence and on whose part should responsibility be held?

Parliament. Announcements, Tabling and Committee Reports, 2014. First session, Fifth Parliament. No.88 (5 November 2014). Cape Town: Parliament.(p.2808-2809): 6. Report Back had pontificated that although the police stations had complied with the necessary regulations, many police stations around Cape Town such as the Philippi police station lacked an e-Docket system and all dockets were done manually. It could not be determined if the three dockets stolen at that very station had been due to the 8 272 caseload. It has been estimated that each detective is responsible for roughly 130 dockets each.

Parliament. Announcements, Tabling and Committee Reports, 2011. Third session, Fourth Parliament. No.96 (16 August 2011). Cape Town: Parliament (p. 2579, 2580, 2588, 2589, 2595, 2598) A report issued during this parliament session had elucidated to the infrastructural issues which many police stations housing case dockets had grappled with, an absence of security systems such as burglar bars, locks on cupboards where docket were kept and a lack of spare keys etc. were problematic which impeded on the safekeeping of the dockets. Furthermore, a lack of office equipment, vehicles and space for detectives to work in, meant that a congested office shared by many detectives allowed for dockets to vanish off of detectives' desks unknowingly. Furthermore, forty-five personnel had been sharing five computers, a fax machine and a single photocopier which meant that the sanctity and privacy of information stored on the computers had been violated since passwords and codes had to be shared. A solution that has been suggested was to hire paralegals to assist the CSC in data capturing and storage operations.

Parliament. Announcements, Tabling and Committee Reports, 2013. Fifth session, Fourth Parliament. No.58 (15 May 2013). Cape Town: Parliament. (p.1585 1586, 1587, 1590, 1593, 1594, 1614, 1621, 1626, 1627, 1630, 1631, 1634) The Community Police Forum (CPF) Chairperson had been perturbed by the loss of fifty-nine dockets at the Mafikeng police

> station. The number of lost dockets had increased to forty-nine from ten. He further alluded to the "bad apples" that needed to be eliminated. Other disturbing facts included the accessibility of dockets from the outside despite the detectives' offices being on the second floor of the building and that a detective had been assigned ninety-six dockets in which the filing cabinet key had been lost, the Branch Commander did not have in his possession a duplicate key for the cabinet.

The issues raised in Parliament are highly contested. The magnitude of police incompetence is apparent; however, it must be borne in mind that there are hard-working, ethically driven police officers who risk their lives and perform sterling work in accordance with their professional mandates. With reference to the last cited parliamentary session, (2013) the 'bad apples' ought to be purged from the system; it is of vital importance that this research should separate 'good cop' from 'bad cop' and acknowledge those who execute their duties with integrity.

What can be extracted from the parliamentary reports is a common feature that had the archives of the police stations investigated been neat and orderly the dockets could have easily been traced. However, some stations were plagued with rodent infestation and the archive rooms had gaping holes in the walls which called for serious attention. The rodent infestation was not only a heath concern to the police officers but also jeopardised the sanctity of the files housed within the archive room. It is proclaimed that docket security at the CSC has been prejudiced by the lack of facilities and security systems at the police stations. It has been alleged that dockets were strewn across detectives' offices unattended, allowing dockets to be accessed through windows. Paradoxically the option of safeguarding dockets within locked archive rooms would nevertheless expose them to theft and destruction. On the other hand dockets that had been locked away inside filing cabinets were inaccessible as the key had been lost and no spare could be located by the Branch Commander. By analysis, it can be said that computerised systems would rid police stations of such negligent conduct. However, what had been noticed during the parliamentary investigation was that in some stations that had e-Docket registers completed scanned dockets could not be uploaded as some pages had been missing and written in red ink which could not scan accurately. The researcher concludes that irrespective of the electronic/computerised systems that are present in police stations, the importance of adequate training and skills development must be repeatedly reiterated, as the system is only as good as the person operating the system. A

substantial portion of the money invested in ICT projects should be spent on skills development and crash courses for the consumers of these high-tech products. This would enable consumers to acquire a deeper appreciation for these systems as opposed to resisting the technological movement because of the aversion to new practices and processes.

CONCLUSION

The dire need for transformational government, primarily within the CJS, has given rise to the electronic docket or e-Docket system. The crucial debate is whether or not the e-Docket system has become the saving grace for South Africa's docket dilemma. The question which follows is why the integration of ICT within the CJS and the adaption of international guides and best practices has not yet materialised in South Africa? The e-Docket system is designed to aid in circumventing malicious and corrupt activity, docket loss, docket destruction and the general mismanagement of dockets before and after arriving at courts. Is it sensible to spend exorbitant amounts of taxpayers' money on systems which require constant upgrades and may become susceptible to cybercrimes? A greater issue relates to the unscrupulous behaviour of institutional actors and agencies which have turned a blind eye to corrupt activities within the workplace. The issue of lost, stolen or destroyed dockets has exposed numerous flaws within our system, but how expansive is the issue of lost and missing dockets and is it really an important issue in the CJS? Yes, the consequences arising from lost, missing, stolen or destroyed dockets have serious ramifications for the rights of affected parties. This results in unnecessary delays, postponements and or miscarriages of justice. What will be discussed in the next chapter are the repercussions of inadequate management and administration of case dockets in and out of court and the human rights violations and miscarriages of justice suffered by various stakeholders affected by maladministration.

Chapter Four:

Implications and Human Right Violations Emanating from an Absence of Case Dockets

An article which appeared in a prominent local newspaper, *Mail & Guardian* reports an anecdote by Angie, a rape victim, about the implications and effects brought about by a lost docket. Angie had been sexually assaulted and raped by her neighbour and was determined to bring her rapist to justice. She adhered to all the necessary protocols and procedures by painstakingly providing the police with statements and medical reports. However, Angie was informed by the police that her docket had been lost, including all of the medical evidence. The SAPS brought Angie in to recall her statement, but, in a state of frustration, decided to drop the charges against her neighbour.[56] There are many similar stories of docket loss and the improper management of case dockets in South Africa, which paints a picture of ineffectual administration and/or negligent docket management, the effects of which inhibit victims from obtaining recourse and access to justice, thereby violating fundamental human rights. The following discussion will be unpack the distinction between missing and lost dockets, as well as the negative effects of missing, lost and stolen dockets and systemic corruption on various stakeholders. Furthermore, Chapter Four identify the various stakeholders and how an absence of dockets may lead to the denial of access to justice, miscarriages of justice and the violation of fundamental human rights.

1. INTRODUCTION

Missing dockets have serious ramifications for the lives of various stakeholders. In order to understand the negative effects of missing or lost dockets on each of the

[56] Groenewald, Yolandi. 'Missing dockets are not a problem' *Mail & Guardian*. 21 December 2006 Available at: *https://mg.co.za/article/2006-12-21-missing-dockets-are-not-a-problem* (Accessed 12-05-2017)

stakeholders, as a point of departure, a distinction must be made between missing and lost dockets. Subjectively, the terms missing and lost may appear tautological; however the term 'missing' refers to 'an item which is cannot be found because it is not in its designated place'[57] and the term 'lost' implies "(of a thing) which has been removed and cannot be recovered'.[58] The distinction could refer to the time period in which the item (a docket) is missing (untraceable) or permanently irretrievable in which case the docket is 'lost.' Police have not yet created the distinction between the terms when making reference to missing and lost dockets in reports but rather use the terms broadly and interchangeably. This vast difference does not translate well for a stakeholder. Who are the stakeholders involved in the docket process? The section below will identify the stakeholders to docket loss, theft, systemic corruption and missing dockets, and the implications thereof.

2. STAKEHOLDERS

Natural and juristic persons affected by dockets are victims of crime, family members of victims of crime, accused persons, crime researchers and academic scholars, NGOs and the Institutional actors and departments such as NPA, SAPS, Department of Justice and Constitutional Development and the Department of Correctional Services. The justification for alluding to the various stakeholders is to highlight the silent yet critical roles and accountabilities of each of the stakeholders. The term stakeholder is often used in the corporate and private sector. The natural and juristic persons aforementioned are titled stakeholders because it is imperative to take into account their role in relation to missing case dockets and the manner in which it impacts on their interests. Negligent docket management negatively affects the social relations between the police and citizens – this goes back to the analysis in Chapter One in which a document is regarded as proxy in social settings (Prior, 2008). As a result citizens tend to lose confidence in the justice system. Once citizens begin to lose faith in the CJS, two consequences arise − first, underreporting of crimes occur as citizens decide that the CJS will not reciprocate by filtering the accused person through the the CJS pipeline (the triad of arrest, prosecution and conviction). Therfore, the stakeholder perceives that he/she gains no benefit by reporting crimes to the police. Whilst no emperical data exists to represent the

[57] Oxford Dictionary. Definition of 'missing'. *https://en.oxforddictionaries.com/definition/missing* (Accessed 06-02-2017)
[58] Ibid.

correlation between an absence of dockets and underreporting, section *2.5. The effects of underreporting on generating statistics* below will illustrate the knock-on effects underreporting may have on stakeholders, crime statistics and SAPS annual reports. The second consequence of a lack of confidence in the CJS is that the public starts to take the law into its own hands, resulting in informal methods of obtaining justice by illict means such as mob justice. The next segment will expand on some of the issues and implications emanating from lost, stolen and missing dockets and the impact lost, stolen and missing dockets bear on various stakeholders in relation to accessing justice.

Access to justice

> *'When I first took the bench, I was assigned to handle a calendar of criminal cases. It was an enormous docket. I tried in each case to make sure that the litigants not only in fact received, but also felt that they had received, a full and fair opportunity to be heard." – Jacqueline Nguyen*

Obtaining justice or access to justice is inherently perceived as one of the most core human rights of natural persons. Professor of Law at the University of Natal, David McQuoid-Mason (1999) interprets access to justice within the CJS scope as being access to legal representation for arrested and detained persons. However, in my opinion, the term can be extended further. Courts are often seen as the nuclei for dispensing justice and thereby form the bedrock of constitutionalism and democratic rule. Therefore, can it not be said that the denial of access to courts by virtue of missing or lost dockets not only implies the denial of protected and guaranteed human rights but also the denial of access to justice? How does an absence of dockets prohibit a stakeholder from attaining justice? If justice is the ultimate destination, then a docket would enable entry to the CJS pipeline. Rape complainants whose dockets disappear have the arduous task of repeating and reliving the series of events by having new dockets opened. In addition to the right to access to justice are the other human right violations caused by an absence of dockets: fair and speedy trial rights and due process rights. The section below will elaborate on the grave injustices and repercussions faced by respective stakeholders where case dockets are absent from proceedings.

2.1. Victims of crime

Docket loss affects victims of crime directly. The most pertinent rights violated include access to justice and miscarriages of justice where suspects are able to evade

trial owing to matters being struck off the roll. Victims and complainants alike bear the brunt of docket loss as they are left to deal with the injustice of enduring the effects of crime without receiving a sense of equilibrium from the courts and justice system.

2.2. Accused persons

The loss of dockets also impacts the constitutionally guaranteed rights of the accused to have access to information contained within the dockets. Furthermore, prolonged waiting periods where an accused is remanded in custody for unreasonable time periods as well as the right to a speedy trial (where postponements are caused) and the right to due process and a fair trial results in an infringement of these rights. Docket loss for an accused person becomes a double-edged sword. Accused persons may themselves become victims of crime ie systemic corruption. Similarly, were an accused person is in fact an innocent party, missing dockets may be the ticket to an egregious miscarriage of justice. Samuel Khune's anecdote exemplifies a miscarriage of justice − a convicted drug-dealer who had been serving his 12-year sentence at a correctional facility in the Eastern Cape had applied for leave to appeal his sentence; however pertinent court records and transcripts pertaining to his conviction had disappeared and thus hindered the appeal process. The disappearance of court documents and records have been described as common practice as institutional actors are unaffected by the number of appeals that have been dismissed owing to lost records.[59] Unlike Samuel, not all inmates are afforded an opportunity to voice themselves through the media which may imply that the number of accused persons disadvantaged by missing records may in fact be an underestimate of the real figures.

2.3. Departments within the CJS

As gatekeepers to the CJS, departments play a key role in being accountable for the management of case dockets. The CJS comprises a network of departments and actors. In this discussion, however, three major role players namely: SAPS, NPA and the courts will be evaluated as dockets are often thought to be lost in transit from police station to court.

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[59] Herrmannsen, Kyla. 'Justice delayed due to problem of missing court records.' *Wits Journalism*. 15 November 2013. Available at*:* *http://www.journalism.co.za/blog/justice-delayed-due-to-problem-of missing-court-records/* (Accessed 14-05-2017)

2.3.1. SAPS

As the first port of call, police stations often bear the brunt of docket loss and theft − when dockets have been reported as either lost, missing or stolen none of the insitutional role players takes responsbility. Instead role players often deny any responsibility. Fundamentally this hinders the administration of justice as accusations and counter accusations between the SAPS and NPA occur. The promise of an effective channel of communication between the SAPS and NPA via a synchronised system may mitigate the ongoing accusations and counter accusations made by each institution. Citizens ought to be sure that a rapport exists among the institutional actors within the CJS.

2.3.2. NPA

During the course of 2017, two incidents of theft occurred at the Chief Public Prosecutor's office in Pretoria. Laptops and computers belonging to the NDPP were stolen. Allegations were made about cases stored in the stolen laptops involving high profile cases. The Pretoria Magistrate's court is well equipped with 'state-of-the-art' CCTV and technology securing the premises of the court.[60] Commentary given by the NPA alluded to incomplete dockets which had to be referred back to the investigating officers thereby causing unnecessary delays and postponements. A Senior Public Prosecutor at the Khayelitsha Magistrates' court complained that the unwarranted and unreasonable delays caused by police officers not bringing dockets to court resulted in serious and violent criminal cases being struck off the roll.[61] In response to the prosecutor's testimony, a prominent police detective stated that the exacerbation of the docket crisis was not due to police inefficiency but rather to disorganisation in prosecutorial circles.[62]

2.3.3. Courts

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[60] Serrao, Angelique 'Robbery at chief prosecutor's office' *News24*. 26 July 2017 Available at: *http://www.news24.com/SouthAfrica/News/exclusive-robbery-at-chief-prosecutors-office-20170726* (Accessed 14-08-2017)

[61] *Towards a safer Khayelitsha*: Report of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha. August 2014. 166

[62] Stegeman, Kate. Dysfunctional detective units, disappearing dockets and a dereliction of duty: Meet Khayelitsha's police. *Daily Maverick*. 26 February 2014 Available at: *https://www.dailymaverick.co.za/article/2014-02-26-dysfunctional-detective-units-disappearing-dockets-and-a-dereliction-of-duty-meet-khayelitshas-police/#.WZnjlD4jGM8* (Accessed 14 -05-2017)

In 2009, 440 inmates in Gauteng were been denied appeals as their transcripts and court records were lost or were not available.[63] However, a Western Cape High Court has ordered that in such situations prisoners had the right to raise missing court records as grounds for being exonerated from their prison sentences.[64] Bozalek J ruled that missing court records needed for appeals was a grave violation of the constitutional right to a fair trial. The repeated incidents of missing and destroyed dockets and other court records in the lower courts has been ascribed as common.[65] As fundamental substrates of the CJS, courts bear the role of intervening in matters of the law. Furthermore, court managers are empowered to oversee the administrative functions of the judiciary so that court hours are not spent on unnecessary delays caused by missing records.

2.4. Crime researchers and academic scholars

Stakeholders of dockets also include researchers and academia. Case dockets are primarily beneficial to the institutional agencies such as the SAPS, NPA as well as the primary stakeholder − the victim. However, dockets may be beneficial to stakeholders external to the courtroom such as researchers, who are able to extrapolate information and data from case dockets to extract information such as: the determinants of crime, *modus operandi* of offenders, investigation output, generated crime statistics and the creation of strategic and crime prevention models (Van der Watt, 2011). Case docket analysis has been highlighted in the South African Police Services' Case Docket Analysis Learner Manual, 2002 – which involves the extrapolation and examination of information contained in the police docket (SAPS, 2002:2). There are limitations in case docket analysis, due to incomplete case dockets, incomplete affidavits or witness statements, illegibility of handwriting, language barriers and or grammatical and spelling errors (Mistry, Snyman and Van Zyl, 2001: 21). Crime researchers, academics and institutional actors are dependent on the invaluable material contained in a docket, which forms the basis of their propositions and arguments. Underreporting of crime hampers

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[63] Herrmannsen, Kyla. Justice delayed due to problem of missing court records. *Wits Journalism*. 15 November 2013.Available at: *http://www.journalism.co.za/blog/justice-delayed-due-to-problem-of missing-court-records/* (Accessed 14-05-2017)

[64] Ibid.

[65] Samodien, Leila. Missing court records bedevil cases on appeal. *IOL News*. 9 May 2013 Available at*:* *https://www.iol.co.za/news/crime-courts/missing-court-records-bedevil-cases-on-appeal-1513336*. (Accessed 19-08-2017)

national statistics and may therefore have debilitating effects on the veracity of debates and academic stances.

2.5. The effects of underreporting on generating statistics

Consistent and regular crime reporting means that through docket analysis, information can be derived from case dockets which generates statistics. Statistics are essential for crime control and crime prevention as funds can be allocated for certain mechanisms and strategies to combat serious and prevalent crimes as illustrated through statistics. Once a crime has been reported, a case docket is opened on behalf of the complainant or victim; each docket that is opened should be linked to the CAS and updated every 24 hours.[66] According to the Auditor General report of 2011/2012 58 per cent of incidents had not been linked to the CAS system.[67] Furthermore, the Auditor General found that recorded data by police on reaction and response times was unverifiable, which detracted from the credibility of the data. Therefore, recorded data may not reflect the actual numbers of crimes being reported but rather an underestimate of the data. The e-Docket and other automated systems aim at enhancing data capturing and the creation of quantitative data through statistics, tables and graphs. This may result in more credible crime statistics. Therefore, until automated systems are fully implemented, NGOs and civil rights organisations represent a secondary avenue for attaining justice, making up for underreporting and the absence of national statistics.

2.6. NGO's and Civil rights organisations

As docket loss becomes more prevalent within the justice system, more NGOs are aiming at placing pressure on institutional actors to find missing dockets and locate copies of them. One in Nine is a feminist driven NGO which advocates the rights of women and contests sexual violence against women and children. One in Nine has been at the forefront for alerting the public to the effects of missing dockets in relation to reported rape cases. In the year 2003, the Greater Nelspruit Rape Intervention Project (GRIP) reported 135 rape dockets missing from that area alone.[68] This led to action on the part of NGOs to secure copies of rape dockets.

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[66] 2012/2013 SAPS Shadow Report Analysis of the SAPS Annual Report - A community perspective. Ndifuna Ukwazi Publishers (p.4-33)

[67] South African Police Service, South African Police Service Annual Report 2012/2013

[68] Groenewald, Yolandi. 'Missing dockets are not a problem' *Mail & Guardian* 21 December 2006. Available at: *https://mg.co.za/article/2006-12-21-missing-dockets-are-not-a-problem*

CIETafrica or Community Information Empowerment and Transparency is a Johannesburg-based sub-branch of CIET, which aims at inculcating community initiatives into the delivery of public services throughout developing countries, including South Africa. CIETafrica has conducted a study in the Southern Suburbs of Johannesburg in which 91 police officers were interviewed. The study had found that 'three out of four' policeman professed that rape cases were more prone to loss of dockets than any other crime. Furthermore in the same study, an indeterminate number of prosecutors and magistrates agreed with the sentiments of the police officials in that '[t]here were opportunities for corruption when dealing with rape cases' (Andersson & Mhatre, 2003) as bribery and lost dockets were the primary drivers for 'system leakage' or systemic corruption (Andersson & Mhatre, 2003). The veracity and weight of the findings and outcome of the latter study can be illustrated by the diagram below which comes from a third study conducted by the Institute for Security Studies. Diagram 3 illustrates how rape dockets have been funnelled and filtered out of the CJS, resulting in fewer than a quarter of convictions.

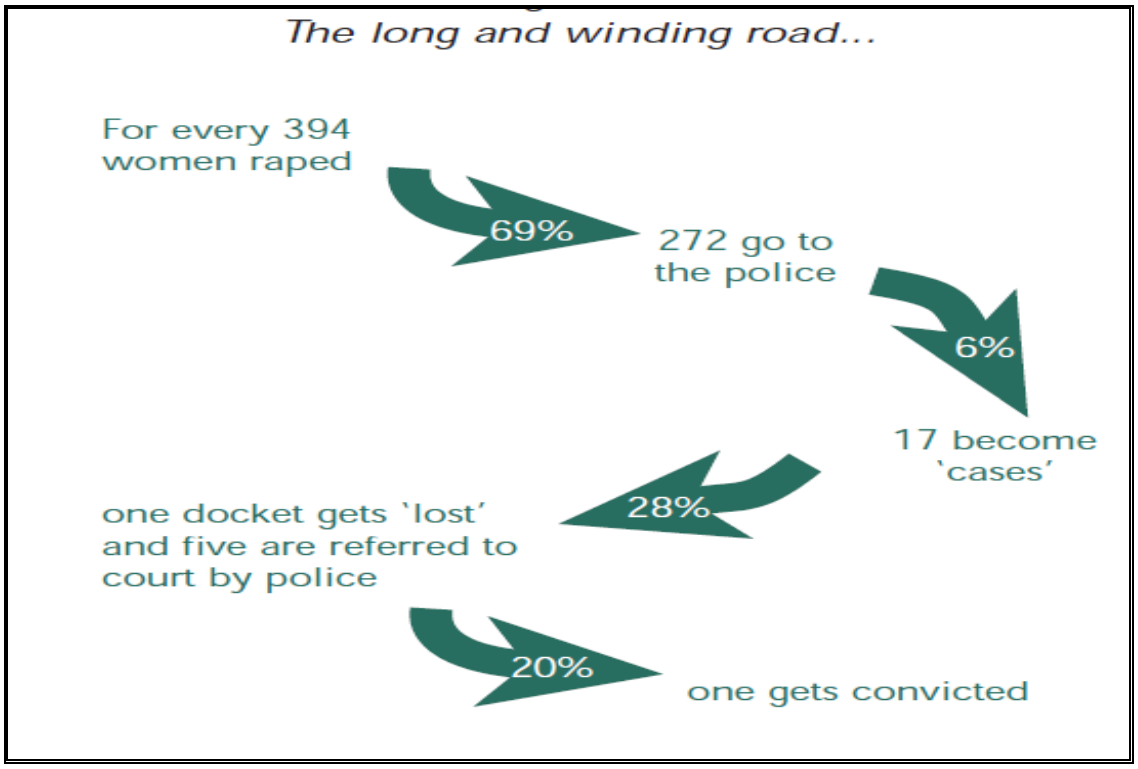

Diagram 3: Illustrates the number of dockets that are filtered through the system in which fewer than a quarter result in a conviction. (Source: Andersson & Mhatre, 2003)

(Accessed 12-05 -2017)

Another study titled 'Mortality of Women from Intimate Partner Violence in South Africa'[69] conducted by the South African Medical Research Council found critical data gaps in the dockets. Researchers pointed to certain cases which had received attention owing to the nature of the crime in which the dockets had been bartered for money (Altbeker, 2005; Abrahams, Martin, Mathews, et al. 2009). The bartering of rape dockets is sombre reality as it projects the acceptance of rape culture in society. As a country that is notorious for exceptionally high rape figures, the sale of rape dockets in South Africa relays a message to victims and complainants of rape that no silver lining of justice awaits them. It is with great regret that the number of rape dockets appears to be frequently lost in contrast to dockets of other crimes. This statement had been verified by medical research titled: Medico-legal Findings, Legal case progression, and Outcomes in South African Rape Cases: Retrospective Review.[70] Childline, a non-profit organisation which renders free counselling service for children of abuse, sexual offences and violence has reported on instances in which children and their guardians could not report sexual offences. A lack of entry points into the justice system ie police stations and community centres were to blame for underreporting (Van Niekerk, 2004). Additionally, in an unpublished report, Cawood (2001) asserts that research conducted at Childline determined that even if dockets of sexual offences were in fact opened on behalf of children, dockets were often reported as missing or lost or were sold as 'damages' in exchange for discontinuing further investigations in order to resolve matters discreetly (Van Niekerk, 2004; Cawood, 2001). Therefore, because of the jarring realties of our CJS, it comes as no surprise that citizens have opted to bypass the court system in order to resolve disputes. Serious crimes are unseen by prosecutors as dockets are being filtered out of the system before they reach the court. What kind of message are we sending to the people of South Africa – despite the constitutional dispensation, are we still practising the injustices of apartheid?

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[69] Abrahams, Naeemah., Martin, Lorna J., Mathews, Shanaaz., Lombard, Carl. 'Mortality of Women From Intimate Partner Violence in South Africa: A National Epidemiological Study.' Article in *Violence and Victims*, February 2009. 546-556

[70] Jewkes, R., Christofides, N., Vetten, L., Jina, R., Sigsworth, R., et al. 'Medico-Legal Findings, Legal Case Progression, and Outcomes in South African Rape Cases: Retrospective Review.' (2009) *PLoS Med 6(10): e1000164. doi:10.1371/journal.pmed.1000164*.

CONCLUSION

As social proxy and entry ticket into the CJS, case dockets serve as invaluable instruments in the lives and business organisation of stakeholders. An entry ticket into the CJS is through the textual narratives of the commission of crime – a case docket. The consequence of negligent and ineffective docket management has hampered the protection of certain rights ie access to justice along with other fundamental human rights which are enshrined and endorsed by the Constitution of South Africa. As South Africa strives for an equal and justice system underpinned by democratically founded policies and frameworks the restoration of confidence within society is one of the most primary objectives of the CJS. The ability of technology to expedite case flow and produce statistics needed for court performance does not circumvent the violation of human rights. Access to justice is a complex matter: first techno-justice systems have marginalised the poor on account of their inability to access court documentation − the antithesis of South Africa's democratic principles; secondly access to justice does not only include access to courts but access to information which involves persons on both sides of the CJS ie prisoners who cannot appeal and victims of crime. It is of utmost importance that policy makers and institutional actors work together to address the key issues surrounding negligent and ineffectual docket management and administration. Good governance and ethical leadership are the pillars of docket management, and without effective governance frameworks, accountability and transparency the administration of case dockets can never be successful.

Chapter Five: Conclusion and Recommendations

As the world evolves exponentially into the fourth industrial revolution, technology is changing the very nature of how we work and live. The following five global techniques have been used to enhance case docket management and case flow: case screening or docket control, judicial intervention, attorney and advocate support, specialisation of courts and the integration of Information and Communications Technology (ICT). Arguably, these best practices from which South Africa has opted to draw and implement have not been ideal for the South African criminal justice landscape. Although technology has made significant strides and has been beneficial in assisting institutional actors with daily tasks, in retrospect, it has been overestimated as a transformational paradigm for case docket management. Technology is not indifferent or immune to human interferences, much like the case of paper-based dockets. In fact, the relentless speed of technological evolution has seen an escalation in new and complex legal issues, such as tampering, editing, removal of data, cybercrime, maintenance issues, and the need for regular upgrades, creating advanced systems at very high cost that prove more demanding than dossiers. This gives rise to the question whether technology is the way to remedy South Africa's CJS. In the broader sense, South Africa's CJS has an array of electronic databases for the seven institutional agencies comprising the CJS ie SAPS, NPA, Legal Aid, Department of Justice and Constitutional Development, Department of Social Development, Department of Home Affairs and the Department of Correctional Services. The e-Docket system only forms a small part of the rapid and expanding techno-systems. It is therefore important to assess how the e-Docket system has compared to its national and international counterparts.

Foreseeable problems that exist with the e-Docket system first relate to the inability of e-Dockets to pose as an interactive platform between consumers, as each department possesses its own electronic database/system. Secondly, despite the hurdles and issues surrounding paper dossiers, hard copies of the docket would still have to be made available as the e-Docket system comprises scanned versions of the original docket. Therefore all edits and case updates made must be scanned and uploaded after each addition. Thirdly, police officials have opted for the traditional paper dossiers − officials have resisted taking the step up to a technologically savvy work environment. Perhaps this resistance emanates from the fear of the unknown as

suggested by Fontana (2011), in which officials performing policing administrative tasks have to have a change in mind-set and create the switch from paper dockets to computerised systems. On the other hand, outsourcing of policing administrative tasks may allow officials to continue with their primary mandates of crime fighting, as lessons learnt from outsourcing reveal that redirecting of funds into proper channels can yield positive results. However, with limited resources, the CJS continues to optimise tasks with the resources at its disposal in a cost-effective manner. As much as one heaps praises on the wonder of technological advancements and their impact on society, it cannot function on its own. In order to reap the maximum benefits of technological capabilities, they need to be complemented by competent, knowledge and capable human actors to create a mutually symbiotic relationship.

If the South African CJS wishes to adopt philosophies drawn from the private sector, it needs to align itself with the foundations of such a distinct workplace environment. High-performing institutions invest significantly in its people in training and development as the development of specialised skills of institutional actors will add value to the business structure as well as country. By investing in its human capital to develop and close their competency gaps, it creates a sustainable talent pool and creates meaningful work which will eliminate the need to outsource. Institutional actors' literacy skills are crucial elements to the sustainability and effectiveness of the system as a whole, and it is therefore imperative that funds be earmarked for the education and training of institutional actors. Moreover focus and attention should be invested for the institutional actors to further basic skills or expand on existing skills.

Good governance offers greater accountability and transparency, increased efficiency, adherence and compliance to the rule of law, and a greater responsibility to the needs of society. The loss of a docket is already a battle lost to the detriment of the needs of society. The most prominent issues of docket mismanagement are the rationale or 'justifications' behind missing, stolen and/or misplaced case dockets which are predicated on several factors. One of the factors is the unethical behaviour of institutional actors both towards the nature and functions pertaining to their duties as well as their behaviour towards the people they serve. It is without question that the NPA and the SAPS should be held in high regard in relation to the work that is

performed by these two institutions. Constitutional ethos and principles should be upheld as the mandate and foundation for case docket governance for both the SAPS and the NPA in discharging their duties without fear, favour or prejudice. The abuse of rank and leadership creates a pattern that legitimises unscrupulous behaviour for future employees. The fight against coruption, nepotism and crime can only be enacted by those empowered individuals who play a crucial role in dispensing justice to the guilty, compensating the afflicted, and freeing the innocent in society. The CJS is struggling greatly to deal with the 'bad apples' and criminality external to the system, making it almost a futile and labourious task to have to deal with internal and systemic criminality woven into the fabric of the CJS. Therefore, in today's complex and challenging environment, effective and sustainable socio-economic development requires good governance, credible structures, policies and institutional actors to be held accountable at every level within the CJS.

> The emphasis placed on strong leadership reiterates the inherent powers of the judiciary in their role as gatekeepers to not simply an effective case management system but to the justice system in totality. This power vested in the judiciary far surpasses the issues faced by technological challenges; thus, transparency and governance of courts is premised on the power of leadership and the manner in which that power is exercised. (Kelso, 1998)

The solution to South Africa's issues of missing, lost and stolen case dockets does not vest in North American or Eurocentric approaches, nor does it vest in outsourcing, privatisation or NPM principles. It vests in the competence and capabilities of South African leadership. Therefore, South Africa needs to invest in its greatest asset of all − its human capital − by developing and equipping its people to embrace the technological revolution. South African leadership must take accountability and charter a course with an authentic framework best suited for South African problems.

Recommendations

The recommendations below are merely alternatives given by the researcher in order to find a solution to the following research problems:

1. Prosecutorial administrative tasks

According to F W Kahn (1997) prosecutors spent roughly 3 000 hours per year had been spent on clerical tasks to prepare copies of case dockets for the defence. An alternative to employing more staff or outsourcing administrative prosecutorial tasks to third parties would be to introduce court assistance into the LL.B stream. Police officials at CSCs are assisted by paralegals who perform administrative tasks for police officials; similarly, by introducing experiential training into the LL.B curriculum, prosecutors would be able to effectively manage their court hours much more constructively as less time would be spent on clerical tasks and more hours spent inside courtrooms which might result in fewer delays and postponements preparing documentation. Additionally, this clinical work would provide practical training for LL.B students, exposing them to court practices and protocols. Moreover, the CJS would reap the benefit of 'unpaid labour' as opposed to employing more staff or outsourcing.

2. Expediting court performance and enhancing CFM through specialised skills

Forensic science is a rare resource in high demand needed to combat, investigate and prevent crime in South Africa. The Aspirant Prosecutor programme which prepares potential candidates to become not only public protectors but guardians of the law should include specialised modules in its year-long course including forensics. It is worth reiterating that skills development is central to creating a talent pool of highly skilled, knowledgeable and competent prosecutors. They will have a positive impact not only in quicker turnaround time for docket screening and trial preparation but also significantly contribute to the specialisation of skills within the country, as so often many skilled individuals leave South Africa and seek employment abroad.

3. Maladministration of case dockets

Good governance will ensure the establishment of measurement and control mechanisms to hold institutional actors accountable for carrying out their roles and responsibilities ethically and effectively. The state should remove and criminally

charge all unethical and corrupt leaders within the CJS, to set an example for lower ranking officials that unscrupulous and immoral behaviour will not be tolerated and that the wheels of justice do eventually turn. The fruition of good governance rests with the discharge of duties by the SAPS and NPA without fear, favour or prejudice. As docket screening is inherently a function performed by the prosecutorial authority, dockets which possess political undertones should be referred to an ombudsman or a tribunal which oversees the work of the NPA. Currently, complaints against the NPA are directed to the NPA which has a host of issues of its own. Therefore, the establishment of a prosecutorial oversight board is imperative for dealing with the prosecution of executives and leaders in the South African government. Additionally the state must provide protection for whistle-blowers.

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